5 Am. Jur. 2d Arson and Related Offenses Summary

American Jurisprudence, Second Edition | May 2021 Update

Arson and Related Offenses

Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.

Correlation Table

Summary

Scope:
This article discusses the crime of arson as known to the common law and as defined by statute, as well as the crime of burning insured property to injure or defraud the insurer. It includes a discussion of the elements of the crimes of arson and burning with intent to injure or defraud an insurer, persons liable for such crimes, defenses available, and various procedural and evidentiary matters related to the prosecution and trial of an arson case.

Federal Aspects:
Discussed in this article is federal jurisdiction over an American Indian who commits arson within Indian country, as well as the federal crime of arson within the special maritime and territorial jurisdiction of the United States.

Treated Elsewhere:
Applicability of "firefighters' rule" to situations involving arson, see Am. Jur. 2d, Premises Liability § 428

Civil liability for injury or damage caused by fires, see Am. Jur. 2d, Fires §§ 16 to 56

Criminal and penal liability for acts, other than those constituting arson, which cause, or prevent the extinction of dangerous fires, see Am. Jur. 2d, Fires §§ 11 to 15

Effect of failure to disclose previous fires on avoidance of insurance policy, see Am. Jur. 2d, Insurance § 1273

Effect of provision against fraud in insurance policy on recovery of insured, see Am. Jur. 2d, Insurance § 1007

Statement imputing commission of arson as actionable defamation, see Am. Jur. 2d, Libel and Slander § 172

Sufficiency of evidence to prove the intent to defraud an insurer, see Am. Jur. 2d, Insurance § 2068

Use of declaratory judgment to determine questions of coverage and liability under fire insurance policies, see Am. Jur. 2d, Declaratory Judgments § 143

End of Document

5 Am. Jur. 2d Arson and Related Offenses I Refs.

American Jurisprudence, Second Edition | May 2021 Update

Arson and Related Offenses

Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.

I. In General

Topic Summary | Correlation Table

Research References

West's Key Number Digest

West's Key Number Digest, Arson 1, 2, 37(3)

A.L.R. Library

A.L.R. Index, Arson

A.L.R. Index, Criminal Law

West's A.L.R. Digest, Arson 1, 2, 37(3)

End of Document

5 Am. Jur. 2d Arson and Related Offenses § 1

American Jurisprudence, Second Edition | May 2021 Update

Arson and Related Offenses

Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.

I. In General

§ 1. Definitions; common-law arson

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Arson 1

At common law, arson was the malicious and voluntary or willful burning[1] of another's house,[2] or dwelling house,[3] or outhouse[4] appurtenant to or a parcel of the dwelling house[5] or within the curtilage.[6]

Observation:

Where the legislature has provided for punishment of any person convicted of common-law arson without defining the crime, the common-law definition is still in force.[7]

The curtilage of the dwelling house is the area close to and surrounding the dwelling and is habitually used for family purposes,[8] as well as for the carrying on of domestic employment,[9] and it includes a yard,[10] garden, or sometimes a nearby field used in connection with the dwelling,[11] as well as the area around the dwelling house occupied by barns, cribs, and other outbuildings.[12] The burning of buildings located within the curtilage is included in the definition of arson because the proximity of the buildings to the dwelling house increases the risk of danger to any inhabitants of the house.[13]

Practice Tip:

Where the testimony is indeterminate in character as to whether a given house or structure is or is not within the curtilage, the question is properly submitted to the jury.[14]

Arson at common law was an offense against the security of habitation or occupancy, rather than against ownership or property.[15] In other words, the common law of arson was intended to protect not property as such, but the occupants of property.[16] Because the main purpose of the prohibition of common-law arson was to protect against danger to those persons who might be in the structure burned,[17] the offense was considered an aggravated felony and therefore deserving of a harsher punishment than any other unlawful burning, because it manifested in the perpetrator a greater recklessness and contempt for human life than the burning of an unoccupied building or structure.[18]

The generic definition of arson comprises the intentional, knowing, willful, or malicious burning of personal or real property.[19]

Footnotes

1 State v. Britt, 132 N.C. App. 173, 510 S.E.2d 683 (1999).

2 Com. v. Lamothe, 343 Mass. 417, 179 N.E.2d 245 (1961).
As to what constitutes a house, see § 13.

3 State v. Shaw, 305 N.C. 327, 289 S.E.2d 325 (1982).

4 State v. Varsalona, 309 S.W.2d 636 (Mo. 1958).
As to definition of an outhouse as encompassing more than an outdoor privy, see § 14.

5 State v. Ferguson, 233 Iowa 354, 6 N.W.2d 856 (1942).

6 State v. Cuthrell, 235 N.C. 173, 69 S.E.2d 233 (1952).

7 State v. Eubanks, 83 N.C. App. 338, 349 S.E.2d 884 (1986).

8 U.S. v. Potts, 297 F.2d 68 (6th Cir. 1961).

9 State v. Woods, 109 N.C. App. 360, 427 S.E.2d 145 (1993).

10 State v. Nipper, 177 N.C. App. 794, 629 S.E.2d 883 (2006).

11 People v. Taylor, 2 Mich. 250, 1851 WL 1784 (1851).

12 State v. Nipper, 177 N.C. App. 794, 629 S.E.2d 883 (2006).

13 State v. Nipper, 177 N.C. App. 794, 629 S.E.2d 883 (2006).

14 State v. Woods, 109 N.C. App. 360, 427 S.E.2d 145 (1993).

15 Richmond v. State, 326 Md. 257, 604 A.2d 483 (1992).
In keeping with its common law roots, first degree arson is a crime against habitation, not persons or property.
Cure v. State, 421 Md. 300, 26 A.3d 899 (2011).

16 U.S. v. McBride, 724 F.3d 754 (7th Cir. 2013).

17 State v. Campbell, 332 N.C. 116, 418 S.E.2d 476 (1992).

18 State v. Rand, 132 Me. 246, 169 A. 898 (1934).

19 United States v. Mitchell, 218 F. Supp. 3d 360 (M.D. Pa. 2016).

End of Document

5 Am. Jur. 2d Arson and Related Offenses § 2

American Jurisprudence, Second Edition | May 2021 Update

Arson and Related Offenses

Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.

I. In General

§ 2. Arson as defined by statute

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Arson 1

Although the common-law definition of arson is still in force in at least two jurisdictions,[1] statutes, generally, have enlarged upon the common-law definition of arson, and such definitions need not conform to common-law definition so long as the statute definitely and sufficiently gives the elements of the crime.[2] It is within the power and judgment of a state legislature to define arson as the burning of buildings and property other than a dwelling house or other houses within the curtilage.[3] Arson offenses are confined to the burning of structures or property and do not apply to the burning of a person.[4]

The legislature has the power to define the crime of unlawfully burning property, and the court is bound by such language.[5]

Footnotes

1 Richmond v. State, 326 Md. 257, 604 A.2d 483 (1992); State v. Jones, 110 N.C. App. 289, 429 S.E.2d 410 (1993).

2 State v. Cuthrell, 235 N.C. 173, 69 S.E.2d 233 (1952).

3 State v. Williams, 263 N.J. Super. 620, 623 A.2d 800 (App. Div. 1993).
"Arson" is the willful and malicious burning of the dwelling house of another person. State v. Burton, 224 N.C. App. 120, 735 S.E.2d 400 (2012).

4 State v. Foust, 482 S.W.3d 20 (Tenn. Crim. App. 2015).

5 Fowler v. State, 382 N.W.2d 476 (Iowa Ct. App. 1985).

End of Document

5 Am. Jur. 2d Arson and Related Offenses § 3

American Jurisprudence, Second Edition | May 2021 Update

Arson and Related Offenses

Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.

I. In General

§ 3. Burning to injure or defraud insurer

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Arson 2, 37(3)

Some jurisdictions label and treat burning to defraud an insurance company as arson,[1] while others may declare it to be a separate and distinct offense.[2]

Observation:

The offense of arson in the first degree does not require that the fire be set with the intent to defraud the insurer, and instead, the offense is shown if the accused knowingly damages any insured dwelling without the consent of the insured by fire or explosive.[3]

Footnotes

1 People v. Smith, 258 Ill. App. 3d 633, 196 Ill. Dec. 53, 629 N.E.2d 598 (1st Dist. 1994).

2 Brower v. State, 217 Miss. 425, 64 So. 2d 576 (1953).

3 Barber v. State, 318 Ga. App. 240, 733 S.E.2d 525 (2012).

End of Document

5 Am. Jur. 2d Arson and Related Offenses § 4

American Jurisprudence, Second Edition | May 2021 Update

Arson and Related Offenses
Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.

I. In General

§ 4. Federal statutes

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Arson 2

A.L.R. Library

Jurisdictional Basis for Prosecution Under 18 U.S.C.A. s844(i), Making It Federal Offense To Destroy, by Means of Fire or Explosive, Property Used in Interstate or Foreign Commerce or in Any Activity Affecting Interstate or Foreign Commerce, 71 A.L.R. Fed. 2d 71

Trial Strategy

Blasting, 24 Am. Jur. Proof of Facts 1

Forms

Forms relating to explosions and explosives, generally, see Am. Jur. Pleading and Practice Forms, Explosions and Explosives [Westlaw®(r) Search Query]

Whoever, within the special maritime and territorial jurisdiction of the United States, willfully and maliciously sets fire to or burns any building, structure or vessel, any machinery or building materials or supplies, military or naval stores, munitions of war, or any structural aids or appliances for navigation or shipping, or attempts or conspires to do such an act, will be imprisoned for not more than 25 years, fined the greater of the fine under this title or the cost of repairing or replacing any property that is damaged or destroyed, or both. If the building be a dwelling or if the life of any person be placed in jeopardy, such person will be fined or imprisoned for any term of years or for life, or both.[1]

Moreover, Congress, by statute, used its power to regulate interstate commerce to enact a statute which grants to the federal courts jurisdiction to punish the malicious burning or exploding of any building, vehicle or other real or personal property used in interstate or foreign commerce or which affects interstate or foreign commerce.[2] Although the federal arson statute's interstate commerce requirement is frequently called the jurisdictional element, it is simply one of the essential elements of the statute; it is not jurisdictional in the sense that it affects a court's subject matter jurisdiction.[3]

Statutes provide enhanced penalties for arson crimes in connection with property owned, possessed by, or leased to the United States.[4] Additionally, no person will be prosecuted, tried, or punished for any noncapital offense under the federal statute unless the indictment is found or the information instituted not later than 10 years after the date on which the offense was committed.[5]

The federal arson statute was within Congress's Commerce Clause authority since it contains the requisite jurisdictional element that the property damaged by arson has been used in interstate or foreign commerce or in any activity affecting interstate or foreign commerce.[6] The federal arson statute does not exceed congressional power under the Commerce Clause since the activity regulated by the statute is the burning of property used in or affecting commerce, and the aggregate effect of such arsons on commerce is substantial.[7]

The federal arson statute has been construed to apply without question to all commercial property.[8] Commercial activity which will support application of the statute has been found with respect to rental property.[9] Federal jurisdiction is granted even if the rental property is vacant at the time of the arson if the owner maintains its rental status, tries to rent the property or insures the premises as rental property.[10] Other activities that have enough of an effect on interstate commerce to make the statute apply are the construction of real estate[11] and the sale of goods.[12] The destruction of noncommercial property also comes within the jurisdiction of the statute if the property bears a sufficient nexus to interstate commerce.[13]

For arson of a building to fall within the coverage of the federal arson statute, the building must be "used" in an activity affecting commerce; qualification is most sensibly read to mean active employment,[14] for commercial purposes,[15] and not merely a passive,[16] passing, or past connection to commerce.[17] In determining whether a property is "used in" interstate commerce or interstate commerce-affecting activity, the proper inquiry is into the function of the building itself, and then a determination of whether that function affects interstate commerce.[18] To determine the use of a property in a prosecution for committing arson on an investment property, the correct analysis is to look to the current use of the property at the time of the fire.[19]

A conviction under the federal arson statute was not supported by evidence that the property was used in interstate or foreign commerce where:

• The property was an owner-occupied residence not used for any commercial purpose[20]

- The community church operated a small school, which purchased textbooks, equipment, and other items from out-of-state vendors, and some of its students attended out-of-state universities after graduation, to which the church made donations, and the church sent funds to an out-of-state congregation and used the church building to raise funds for an out-of-state mission[21]

- The church's use of materials purchased in interstate commerce and its use of natural gas from an out-of-state source was deemed an insufficient basis for finding that the church annex was "used in" a commerce-affecting activity[22]

- The owner maintained an office in the residence that the owner used to prepare memoranda relating to the owner's position as an electrical engineer in which the owner worked on projects for the Canadian government, since the employer did not require the owner to maintain an office and the computer was not linked to the employer's computer or interstate phone lines[23]

- The property was used as clubhouse for the local chapter of motorcycle club and was used for local chapter meetings, the dues paid by the club members stayed with the local chapter to pay for the expense of the building and other local costs, and although some of the dues were used to reimburse members for their trips taken across state lines, any affect that those dues had on interstate commerce was passive, minimal, and indirect[24]

- A church building was used by a church to simply engage in ordinary religious activities[25]

A restaurant is per se used in an activity that affects interstate commerce, and, therefore, is subject to regulation under the federal arson statute.[26] A conviction under the federal arson statute is supported by evidence that the property was used in interstate or foreign commerce where:[27]

- A restaurant that the defendants burned down purchased meat and poultry from an out-of-state supplier on a regular basis, and its insurer's headquarters were out-of-state[28]

- The evidence showed that the restaurant had fire insurance written by two companies, both from out-of-state, it obtained fuel from out-of-state, and it bought food from out-of-state[29]

- The evidence showed that the commercial building in which proprietor rented restaurant space for a new Georgia restaurant was owned by a New Jersey partnership, the shopping center was managed by a New Jersey company, that another commercial property in the same shopping center was damaged by the fire, that several items ordered and received by the proprietor were produced by out-of-state manufacturers, and that, had the restaurant opened, it would have been a public restaurant available to serve interstate travelers[30]

- Although the properties were temporarily vacant, the owners attempted to rent the properties, so that the properties were not permanently removed from the stream of commerce[31]

- The rental townhouse unit in an apartment complex was used by its tenants as a private residence, and was also used by its owner as a source of rental income[32]

Absent any explicit statutory basis, the federal court lacked jurisdiction, in a prosecution on multiple counts of violating the statute prohibiting willfully setting on fire to lands owned or leased by, or under the partial, concurrent, or exclusive jurisdiction of the United States,[33] where the fires were set on state-owned lands, even though the land was under the jurisdiction of the U.S. for purposes of the Cooperative Fire Management Agreement (CFMA) and one fire burned to within seven feet of land owned by the U.S.[34]

The "malice" requirement for an arson conviction is satisfied if the defendant acted intentionally or with willful disregard of the likelihood that damage or injury would result from the defendant's acts.[35] Additionally, the statute criminalizing the destruction

of buildings affecting interstate commerce by means of fire was not unconstitutional as applied to the defendants, whose building was a commercial rental property that was still operating on the date of fire. Even assuming the sufficiency of the evidence, the claim was not barred by nonretroactivity principles, as the evidence that the defendants' building was a commercial rental property and that the building was still operating on the date of the fire was sufficient to establish the interstate commerce element of the charge of destroying a building affecting interstate commerce by means of fire.[36]

Footnotes

1 18 U.S.C.A. § 81.
Property protected under the statute is said to include motor vehicles. U.S. v. Bedonie, 913 F.2d 782, 31 Fed. R. Evid. Serv. 642 (10th Cir. 1990).
An Indian who commits arson within the Indian territory is subject to the same laws and penalties as all other persons committing arson within the exclusive jurisdiction of the United States. 18 U.S.C.A. §§ 1153, 3242.

2 18 U.S.C.A. § 844(i).

3 Martin v. Perez, 391 F.3d 799, 2004 FED App. 0427P (6th Cir. 2004).

4 18 U.S.C.A. § 844(f)(1) to (3).

5 18 U.S.C.A. § 3295, referring to 18 U.S.C.A. § 844(f), (i).

6 U.S. v. Chowdhury, 118 F.3d 742 (11th Cir. 1997).

7 U.S. v. Hicks, 106 F.3d 187 (7th Cir. 1997).

8 Russell v. U.S., 471 U.S. 858, 105 S. Ct. 2455, 85 L. Ed. 2d 829 (1985).

9 U.S. v. Hang Le-Thy Tran, 433 F.3d 472 (6th Cir. 2006).

10 U.S. v. Parsons, 993 F.2d 38 (4th Cir. 1993).

11 U.S. v. Andrini, 685 F.2d 1094, 11 Fed. R. Evid. Serv. 837 (9th Cir. 1982).

12 U.S. v. Nguyen, 28 F.3d 477 (5th Cir. 1994).

13 Russell v. U.S., 471 U.S. 858, 105 S. Ct. 2455, 85 L. Ed. 2d 829 (1985).

14 U.S. v. Logan, 419 F.3d 172 (2d Cir. 2005).

15 U.S. v. Davies, 394 F.3d 182 (3d Cir. 2005).

16 Jones v. U.S., 529 U.S. 848, 120 S. Ct. 1904, 146 L. Ed. 2d 902 (2000).

17 U.S. v. Singer, 950 F. Supp. 2d 930 (W.D. Mich. 2013).

18 Jones v. U.S., 529 U.S. 848, 120 S. Ct. 1904, 146 L. Ed. 2d 902 (2000).

19 U.S. v. Singer, 950 F. Supp. 2d 930 (W.D. Mich. 2013).

20 Jones v. U.S., 529 U.S. 848, 120 S. Ct. 1904, 146 L. Ed. 2d 902 (2000).

21 U.S. v. Davies, 394 F.3d 182 (3d Cir. 2005).

22 U.S. v. Rea, 223 F.3d 741 (8th Cir. 2000).

23 U.S. v. Denalli, 73 F.3d 328 (11th Cir. 1996), amended on reh'g in part on other grounds by, 90 F.3d 444 (11th Cir. 1996).

24 U.S. v. Craft, 484 F.3d 922 (7th Cir. 2007).

25 U.S. v. Renteria, 187 Fed. Appx. 704 (9th Cir. 2006).

26 U.S. v. Morrison, 218 Fed. Appx. 933 (11th Cir. 2007).

27 U.S. v. Santiago, 202 Fed. Appx. 399 (11th Cir. 2006).

28 U.S. v. Latouf, 132 F.3d 320, 48 Fed. R. Evid. Serv. 505, 1997 FED App. 0365P (6th Cir. 1997).

29 U.S. v. Hicks, 106 F.3d 187 (7th Cir. 1997).

30 U.S. v. Chowdhury, 118 F.3d 742 (11th Cir. 1997).

31 U.S. v. Craft, 484 F.3d 922 (7th Cir. 2007).

32 U.S. v. Minerd, 112 Fed. Appx. 841 (3d Cir. 2004).

33 18 U.S.C.A. § 1855.

34 U.S. v. Grant, 318 F. Supp. 2d 1042 (D. Mont. 2004).

35 U.S. v. Schlesinger, 372 F. Supp. 2d 711, 67 Fed. R. Evid. Serv. 520 (E.D. N.Y. 2005).

As to element of malice, generally, see § 7.

36 U.S. v. Armstrong, 106 Fed. Appx. 601 (9th Cir. 2004).

End of Document

5 Am. Jur. 2d Arson and Related Offenses II A Refs.

American Jurisprudence, Second Edition | May 2021 Update

Arson and Related Offenses

Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.

II. Elements of Offenses

A. Arson

Topic Summary | Correlation Table

Research References

West's Key Number Digest

West's Key Number Digest, Arson 2 to 9, 11, 12, 31, 40

A.L.R. Library

A.L.R. Index, Arson

A.L.R. Index, Criminal Law

West's A.L.R. Digest, Arson 2 to 9, 11, 12, 31, 40

5 Am. Jur. 2d Arson and Related Offenses § 5

American Jurisprudence, Second Edition | May 2021 Update

Arson and Related Offenses

Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.

II. Elements of Offenses

A. Arson

1. In General

§ 5. Degrees of offense

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Arson 2, 12

Arson statutes frequently divide the crime of arson into degrees[1] which provide a heavier punishment for arson committed under certain circumstances. A more severe punishment is frequently prescribed in the case of the burning of an occupied dwelling[2] than in the case of the burning of other buildings and structures, of personal property, or in the case of a burning of insured property with the intent to injure or defraud an insurer.[3]

Most statutes provide that the crime is either first degree or aggravated arson any time there is a risk to a human life because of malicious and willful burning,[4] with the risk being measured by potential, not actual, harm to persons.[5] However, it has also been stated that a conviction for first degree arson is appropriate if the evidence shows a defendant could reasonably anticipate the presence of a person in the property defendant intends to destroy by arson;[6] being within the zone of danger created by arson is insufficient.[7]

Practice Tip:

Statutes proscribing arson that endangers "human life" punish a single act of arson regardless of whether the arson endangers a single person or a group of people.[8]

Even though almost all fires are potential threats and risks to every firefighter that answers a fire alarm, there are some jurisdictions that do not ignore a risk to firefighters when analyzing the risk to human life.[9] For purposes of establishing the aggravated nature of arson where there is a person in the structure burned, whether or not the person in the structure must be alive at the time of the commission of the arson is a disputed issue.[10]

Footnotes

1 Duke v. State, 132 Fla. 865, 134 Fla. 456, 185 So. 422 (1938).

2 People v. Anderson, 38 A.D.3d 1061, 831 N.Y.S.2d 582 (3d Dep't 2007).

3 People v. Smith, 258 Ill. App. 3d 633, 196 Ill. Dec. 53, 629 N.E.2d 598 (1st Dist. 1994).

4 Moore v. State, 932 So. 2d 524 (Fla. 4th DCA 2006) (disapproved of on other grounds by, Stevens v. State, 226 So. 3d 787 (Fla. 2017)).

5 State v. Plewak, 46 Wash. App. 757, 732 P.2d 999 (Div. 2 1987).

6 Pless v. State, 277 Ga. App. 415, 626 S.E.2d 613 (2006).

7 State v. Benson, 720 N.W.2d 191 (Iowa Ct. App. 2006).

8 Mathews v. State, 849 N.E.2d 578 (Ind. 2006).

9 People v. Anderson, 38 A.D.3d 1061, 831 N.Y.S.2d 582 (3d Dep't 2007).

10 State v. Campbell, 332 N.C. 116, 418 S.E.2d 476 (1992).

5 Am. Jur. 2d Arson and Related Offenses § 6

American Jurisprudence, Second Edition | May 2021 Update

Arson and Related Offenses

Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.

II. Elements of Offenses

A. Arson

1. In General

§ 6. Intent, purpose, or knowledge

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Arson 3

Criminal intent is an essential element of the crime of arson.[1] Purpose, defined as wanting a particular result to occur,[2] is the state of mind required by at least one state arson statute.[3] There must be a general intent to willfully commit the act of setting on fire under such circumstances that the direct, natural, and highly probable consequences would be the burning of the relevant structure or property.[4] Knowledge, defined as knowing that if a certain action is done that a particular result is "practically certain" to occur,[5] is the required state of mind of some other state arson statutes.[6]

Intent is said to be a combination of purpose and knowledge.[7] In light of the fact that direct evidence of defendant's state of mind is difficult to obtain, the defendant's state of mind can be proven by circumstantial evidence, if such evidence, taken as a whole, supports a finding of guilt beyond a reasonable doubt.[8]

Footnotes

1 State v. Burroff, 598 N.E.2d 1081 (Ind. Ct. App. 1992).

2 State v. Smith, 170 Wis. 2d 701, 490 N.W.2d 40 (Ct. App. 1992).

3 State v. Williams, 263 N.J. Super. 620, 623 A.2d 800 (App. Div. 1993).

4 In re V.V., 51 Cal. 4th 1020, 125 Cal. Rptr. 3d 421, 252 P.3d 979 (2011).

5 State v. Smith, 170 Wis. 2d 701, 490 N.W.2d 40 (Ct. App. 1992).

6 People v. Smith, 258 Ill. App. 3d 633, 196 Ill. Dec. 53, 629 N.E.2d 598 (1st Dist. 1994).

7 State v. Smith, 170 Wis. 2d 701, 490 N.W.2d 40 (Ct. App. 1992).

8 State v. Stewart, 850 S.W.2d 916 (Mo. Ct. App. W.D. 1993).

End of Document

5 Am. Jur. 2d Arson and Related Offenses § 7

American Jurisprudence, Second Edition | May 2021 Update

Arson and Related Offenses

Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.

II. Elements of Offenses

A. Arson

1. In General

§ 7. Malice; willfulness

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Arson 4

To be guilty of common-law arson, a felony, the burning had to have been perpetrated in a willful and malicious manner,[1] and if it could not be proven that the burning was willful and malicious, the defendant was guilty of only a trespass.[2] Even though many statutes have codified the crime of arson, many statutes have kept the common-law requirement that the burning be malicious and willful.[3] Arson's willful and malice requirement ensures that the setting of the fire must be a deliberate and intentional act, as distinguished from an accidental or unintentional ignition or act of setting a fire; in short, a fire of incendiary origin.[4] To be a willful act, the setting of the fire must be a conscious, intentional act done knowingly and according to a purpose,[5] as distinguished from a fire that was started by accident or defendant's involuntary act.[6] Similarly, an intentional act creating an obvious fire hazard, done without justification, would certainly be "malicious."[7] An arson is willful, as required for first degree arson, when the fire is intentionally set, and malice is inferred from willfulness.[8]

To establish the wanton and willful element of the offense of burning a public building, it must be shown that the act was done intentionally,[9] without legal excuse or justification,[10] and with knowledge of or reasonable grounds to believe that the act would endanger the rights or safety of others.[11] For purposes of the offense of maliciously damaging or destroying, or attempting to damage or destroy, by means of fire or an explosive, a building owned, possessed by, or leased to, the United States, a defendant acts maliciously if the defendant acts in willful disregard of the likelihood of damaging a building.[12] "Maliciously" for purposes of the arson statute means acting intentionally or with willful disregard of the likelihood that damage or injury will result.[13] To convict a defendant of arson, the government must prove the defendant's maliciousness by introducing sufficient evidence that the defendant acted in conscious disregard of a known and substantial risk that the defendant's actions would endanger human life.[14]

"Malicious," as in the requirement of a malicious burning as used in defining arson, is quite different from its literal meaning. It need not take the form of revenge or ill will,[15] and it is done with a design to do an intentional wrongful act toward another, or toward the public, without any legal justification, excuse or claim of right.[16] Malice in a state arson statute comprises only three components: the willful doing of an unlawful act without excuse is ordinarily sufficient to support the allegation that it was done maliciously and with criminal intent, with the definition of willful meaning intentional, without making reference to any evil intent.[17]

Practice Tip:

Malice need not be express and it can be implied from circumstantial evidence. It is permissible to infer malice from the intent to defraud an insurance company.[18] Additionally, a mental condition not rising to the level of insanity cannot be an "excuse" as contemplated in the malice element of arson; while a defendant's mental disease or defect short of insanity is relevant to whether the defendant was capable of forming the intent needed to commit a particular crime, once such an intent has been proved, mental disease or defect short of insanity is not an excuse for the defendant's conduct.[19]

CUMULATIVE SUPPLEMENT

Cases:

Arson requires proof of general intent with malice. Mass. Gen. Laws Ann. ch. 266, § 1. Commonwealth v. Pfeiffer, 482 Mass. 110, 121 N.E.3d 1130 (2019).

[END OF SUPPLEMENT]

Footnotes

1 State v. Eubanks, 83 N.C. App. 338, 349 S.E.2d 884 (1986).
2 People v. Fanshawe, 137 N.Y. 68, 32 N.E. 1102 (1893).
3 State v. Myers, 313 S.C. 391, 438 S.E.2d 236 (1993).
4 In re V.V., 51 Cal. 4th 1020, 125 Cal. Rptr. 3d 421, 252 P.3d 979 (2011).
5 U.S. v. Velasquez-Reyes, 427 F.3d 1227 (9th Cir. 2005).
6 U.S. v. Velasquez-Reyes, 427 F.3d 1227 (9th Cir. 2005).
7 In re V.V., 51 Cal. 4th 1020, 125 Cal. Rptr. 3d 421, 252 P.3d 979 (2011).
8 Dickerson v. State, 175 So. 3d 8 (Miss. 2015).
9 In re J.L.B.M., 176 N.C. App. 613, 627 S.E.2d 239 (2006).
10 State v. Bruton, 165 N.C. App. 801, 600 S.E.2d 49 (2004).
11 In re J.L.B.M., 176 N.C. App. 613, 627 S.E.2d 239 (2006).

12 U.S. v. York, 600 F.3d 347 (5th Cir. 2010).

13 U.S. v. Grady, 746 F.3d 846 (7th Cir. 2014).

14 Lewis v. U.S., 10 A.3d 646 (D.C. 2010).

15 Hamm v. Com., 16 Va. App. 150, 428 S.E.2d 517 (1993).

16 State v. Eubanks, 83 N.C. App. 338, 349 S.E.2d 884 (1986).

17 United States v. Webb, 217 F. Supp. 3d 381 (D. Mass. 2016).

18 Nasim v. State, 34 Md. App. 65, 366 A.2d 70 (1976).
A showing of express malice is not required in arson cases. State v. Burton, 224 N.C. App. 120, 735 S.E.2d 400 (2012).

19 Com. v. McLaughlin, 431 Mass. 506, 729 N.E.2d 252 (2000).

End of Document

5 Am. Jur. 2d Arson and Related Offenses § 8

American Jurisprudence, Second Edition | May 2021 Update

Arson and Related Offenses

Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.

II. Elements of Offenses

A. Arson

1. In General

§ 8. Motive

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Arson 4, 31

Trial Strategy

Investigating Particular Crimes, 2 Am. Jur. Trials 171 § 6 (Developing leads—Motives)

Motive is distinguishable from intent in that motive is the moving cause which gives rise to action and has to do wholly with desire. It is the reason why a person does a particular thing. Intent, on the other hand, has to do with the purpose or design with which an act is done.[1] Intent is an essential element of the crime of arson, but motive is not, either at common law[2] or under statute.[3] This is not, however, to deny the significance of the presence or absence of proof of motive.[4] While motive is not essential element in proof of crime of arson, the state is entitled to present evidence to establish that there was a motive.[5] Motive is a relevant factor in proving that a suspect willfully started a fire.[6] For example, evidence regarding a defendant's financial difficulties and money mismanagement was relevant to show a motive for burning down a trailer home.[7] Similarly, a trial court did not abuse its discretion by admitting evidence that the defendant had financial difficulties and that the defendant arranged to have a house fire set when the husband was in the town in which the house was located, in a trial of the defendant for arson in the first degree, conspiracy to commit arson in the first degree and insurance fraud; the evidence was relevant to establishing motive, and to establish the State's theory that the defendant blamed financial problems on the husband.[8]

Footnotes

1 State v. M.N., 267 N.J. Super. 482, 631 A.2d 1267 (App. Div. 1993).

2 State v. Turner, 58 Wash. 2d 159, 361 P.2d 581 (1961).

3 State v. Hendrickson, 814 S.W.2d 609 (Mo. Ct. App. S.D. 1991).

4 State v. Ramsundar, 204 Conn. 4, 526 A.2d 1311 (1987).

5 Graf v. State, 327 Ga. App. 598, 760 S.E.2d 613 (2014).

6 McNeil v. State, 398 S.W.3d 747 (Tex. App. Houston 1st Dist. 2011), petition for discretionary review refused, (Sept. 12, 2012).

7 Riley v. State, 278 Ga. 677, 604 S.E.2d 488 (2004).

8 State v. Norton, 151 Idaho 176, 254 P.3d 77 (Ct. App. 2011).

End of Document

5 Am. Jur. 2d Arson and Related Offenses § 9

American Jurisprudence, Second Edition | May 2021 Update

Arson and Related Offenses

Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.

II. Elements of Offenses

A. Arson

1. In General

§ 9. Method or means employed

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Arson 11

It is immaterial how the fire is applied or started. It may be by direct means or by setting fire to some substance or article which will convey it to the building intended to be burned.[1] While generally the damage-producing agency is fire, in several states, by statute, a person who damages property by the use of an explosive or explosive substance is guilty of arson.[2]

Footnotes

1 People v. Fernandez, 150 Misc. 2d 560, 569 N.Y.S.2d 569 (Sup 1991).

2 State v. Myers, 313 S.C. 391, 438 S.E.2d 236 (1993).

End of Document

5 Am. Jur. 2d Arson and Related Offenses § 10

American Jurisprudence, Second Edition | May 2021 Update

Arson and Related Offenses

Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.

II. Elements of Offenses

A. Arson

1. In General

§ 10. Damage required

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Arson 5

A.L.R. Library

What constitutes "burning" to justify charge of arson, 28 A.L.R.4th 482

For the crime of arson, there must be a burning of either real or personal property.[1] The offense of arson is complete whenever the actor starts a fire with the requisite culpable mental state, whether or not damage of any kind actually occurs.[2] Such burning does not have to consume or materially alter the property,[3] as it is sufficient if the fire is actually communicated to any part thereof, however small.[4] However, a defendant's conviction for arson in the first degree could not be sustained because the State presented no evidence of any actual damage to the building involved, and a judgment could not be entered for the lesser included offense of attempted arson because jury was not charged as to this lesser included offense.[5]

After the fire begins, there is no requirement that it must continue for any particular period of time.[6] There is conflicting authority on whether singeing, smoke damage and discoloration rise to the level of burning that is required for the crime to be arson. Some jurisdictions say that it is not sufficient,[7] while other courts say that it is sufficient to constitute burning under the arson statutes.[8] There is, however, no dispute that charring of the wood of a building, whereby the fiber of the wood is destroyed,

is sufficient to constitute burning.[9] If the structure is not wood, but marble, the fact that the marble is cracked and broken is sufficient to constitute burning.[10]

Footnotes

1 State v. Weller, 162 Vt. 79, 644 A.2d 839, 33 A.L.R.5th 889 (1994).

2 Orr v. State, 306 S.W.3d 380 (Tex. App. Fort Worth 2010).

3 State v. Eubanks, 83 N.C. App. 338, 349 S.E.2d 884 (1986).

4 State v. Shaw, 305 N.C. 327, 289 S.E.2d 325 (1982).

5 Campbell v. State, 90 So. 3d 789 (Ala. Crim. App. 2012).

6 Bennett v. State, 201 Ark. 237, 144 S.W.2d 476, 131 A.L.R. 908 (1940).

7 State v. Pigott, 331 N.C. 199, 415 S.E.2d 555 (1992).

8 Williams v. State, 600 N.E.2d 962 (Ind. Ct. App. 1992).
Even slight damage to property, such as scorching, is sufficient to support a conviction for arson. State v. Cross, 91 So. 3d 995 (La. Ct. App. 2d Cir. 2012).

9 Hancock v. Com., 12 Va. App. 774, 407 S.E.2d 301 (1991).

10 People v. Mentzer, 163 Cal. App. 3d 482, 209 Cal. Rptr. 549 (1st Dist. 1985).

5 Am. Jur. 2d Arson and Related Offenses § 11

American Jurisprudence, Second Edition | May 2021 Update

Arson and Related Offenses

Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.

II. Elements of Offenses

A. Arson

2. Property Constituting Subject of Arson

§ 11. Character of property subject to arson laws, generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Arson 5

At common law the subject matter of arson was a house, dwelling house, or outhouse appurtenant to or a parcel of the dwelling house or within the curtilage.[1] The common-law definition has been expanded by statute in most, if not all, states to provide that arson may be committed with respect to a wide variety of buildings, public and private, and to vessels.[2] Moreover, the definition of arson also has been expanded in statutes to include personal property.[3] The burning of any building, structure, vessel, machinery or building materials or supplies, military or naval stores, munitions of war, or any structural aids or appliances for navigation or shipping within the special maritime and territorial jurisdiction of the United States is a federal crime.[4]

It is an essential element of the crime of arson that the burned house be inhabited.[5] The burning of an uninhabited house is not a lesser included offense of arson, and thus, where a defendant was indicted for the latter offense but not former offense, the defendant cannot be convicted of former; it is not an essential element of arson that the burned house be uninhabited, however in some cases it is an essential element of the crime of burning an uninhabited house that the house be uninhabited.[6]

The burning of insured property with the intent to injure or defraud an insurer in many states includes not only the burning of insured buildings but also the burning of any other property which at the time is insured.[7]

Footnotes

1 § 1.

2 State v. Domian, 35 Conn. App. 714, 646 A.2d 940 (1994), judgment aff'd, 235 Conn. 679, 668 A.2d 1333 (1996).

3 U.S. v. Velasquez-Reyes, 427 F.3d 1227 (9th Cir. 2005).

4 18 U.S.C.A. § 81.

5 State v. Britt, 132 N.C. App. 173, 510 S.E.2d 683 (1999).

6 State v. Britt, 132 N.C. App. 173, 510 S.E.2d 683 (1999).

7 § 23.

End of Document

5 Am. Jur. 2d Arson and Related Offenses § 12

American Jurisprudence, Second Edition | May 2021 Update

Arson and Related Offenses

Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.

II. Elements of Offenses

A. Arson

2. Property Constituting Subject of Arson

§ 12. Property of another

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Arson 9

A necessary element of the crime of arson at common law was that the house burned be that "of another."[1] Since common-law arson was an offense against possession rather than property,[2] the phrase "of another" meant in the possession of another.[3] Some jurisdictions have retained, as an element of at least one degree or variety of arson, the common-law requirement that the protected property belong to a person other than the defendant.[4] The requirement is met if defendant shares ownership of the burned property with another.[5] The state, in proving that a party other than the defendant has an interest in the property damaged by fire, as required for an arson conviction, is not required to establish exactly what the nature of the "any interest" is, be it a fee simple, a rental, or a tenancy, in order to satisfy the statutory requirement; all that is required is for the state to establish that the property damaged is a dwelling in which another person has any interest, and was damaged without the consent of the other person.[6]

Observation:

Evidence failed to establish that a defendant set fire to property "of another," as required to convict the defendant under an arson statute; the death certificate indicating that another person owned the property and that the property owner had died eight months before the fire did not permit a reasonable inference that any interest of that owner continued after the owner's death until the time of the fire.[7]

"Property of another," for purposes of an arson statute, has been defined as property in which a person other than the offender has an interest which the offender has no authority to defeat or impair,[8] such as a lien on the damaged property.[9] While it is not necessary to prove the identity of the owner or possessor of the premises, to convict under the arson statute, the proof must establish that the property is one in which someone other than the defendant has an interest which the defendant has no authority to impair.[10] Similarly, under a statute providing that arson involves damaging any building or property in which another person has "any interest," it has been held that there is a sufficient interest in another person when such person has a leasehold interest on the property.[11]

Caution:

It has been held that a mortgagee does not have an interest in the property within the meaning of the statute, because the fact that the legislature made separate provision in the statutory scheme for destruction of property with intent to defraud a mortgagee or insurer indicates that the interest of a mortgagee was not intended for inclusion within the definition of "any interest" in the subject property.[12] At least one jurisdiction has interpreted the phrase "structure of another" to refer to anyone other than the principal actor in the crime, including an accomplice.[13]

In one jurisdiction, the arson statute does not require that a defendant have actual knowledge of someone else's interest in the property.[14] Thus, evidence was sufficient to support the finding that the defendant's wife had an "interest" in the residence which was destroyed by fire, as required for an arson conviction, even though the defendant brought the residence into the marriage and never transferred ownership to the wife; the parties allowed each other to reside in the shared residence, the defendant tolerated or gave passive consent to the wife's continued residency at the house, and the wife had commenced a divorce action prior to the wife's death in the fire, such that an inchoate interest in the residence accrued to the wife as a result of the court order granting the wife exclusive possession of the residence.[15]

Some states expand the common-law liability in their arson statutes to include an intentional, malicious or fraudulent burning of defendant's own real or personal property.[16]

Footnotes

1 State v. Varsalona, 309 S.W.2d 636 (Mo. 1958).

2 § 1.

3 State v. Varsalona, 309 S.W.2d 636 (Mo. 1958).

4 People v. Smith, 258 Ill. App. 3d 633, 196 Ill. Dec. 53, 629 N.E.2d 598 (1st Dist. 1994).
It is an essential element of the crime of arson that another party have an interest in the subject property. State v. Bollinger, 302 Kan. 309, 352 P.3d 1003 (2015), cert. denied, 136 S. Ct. 858, 193 L. Ed. 2d 721 (2016).

5 Ex parte Davis, 548 So. 2d 1041 (Ala. 1989).

6 State v. Bollinger, 302 Kan. 309, 352 P.3d 1003 (2015), cert. denied, 136 S. Ct. 858, 193 L. Ed. 2d 721 (2016).

7 People v. Stewart, 406 Ill. App. 3d 518, 346 Ill. Dec. 273, 940 N.E.2d 273 (1st Dist. 2010).

8 People v. Rawls, 57 Ill. App. 3d 702, 15 Ill. Dec. 396, 373 N.E.2d 742 (1st Dist. 1978).

9 State v. Conrad, 241 Mont. 1, 785 P.2d 185 (1990).

10 People v. Stewart, 406 Ill. App. 3d 518, 346 Ill. Dec. 273, 940 N.E.2d 273 (1st Dist. 2010).

11 State v. Johnson, 12 Kan. App. 2d 239, 738 P.2d 872 (1987).

12 State v. Houck, 240 Kan. 130, 727 P.2d 460 (1986).

13 State v. Williams, 263 N.J. Super. 620, 623 A.2d 800 (App. Div. 1993).

14 State v. Bollinger, 302 Kan. 309, 352 P.3d 1003 (2015), cert. denied, 136 S. Ct. 858, 193 L. Ed. 2d 721 (2016).

15 State v. Bollinger, 302 Kan. 309, 352 P.3d 1003 (2015), cert. denied, 136 S. Ct. 858, 193 L. Ed. 2d 721 (2016).

16 State v. Domian, 35 Conn. App. 714, 646 A.2d 940 (1994), judgment aff'd, 235 Conn. 679, 668 A.2d 1333 (1996).

End of Document

5 Am. Jur. 2d Arson and Related Offenses § 13

American Jurisprudence, Second Edition | May 2021 Update

Arson and Related Offenses

Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.

II. Elements of Offenses

A. Arson

2. Property Constituting Subject of Arson

§ 13. Dwelling house

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Arson 5, 8

A "dwelling house" or "dwelling" has been defined in connection with the crime of arson as any house intended to be occupied as a residence,[1] or an enclosed space, permanent or temporary, in which human beings usually stay, lodge, or reside.[2] The requirement in the statute governing the offense of arson of an inhabited structure that the structure be currently used for dwelling purposes requires proof that at least one person intends to continue living in structure.[3] For instance, a residence is "inhabited" within the meaning of an arson statute, even if vacant, if the residents intend to return; it is the present intent to use the house as a dwelling which is determinative.[4] However, evidence was insufficient to show that a structure burned was inhabited, as required to support the defendant's conviction for arson of an inhabited structure, since the evidence showed that the defendant killed the inhabitant of the structure shortly before setting the structure on fire; the evidence demonstrated that the inhabitant was dead when the defendant set fire to the structure, which prevented the inhabitant from having the intent to continue living in the structure, and there was no evidence that anyone else lived in the structure or intended to live there.[5]

If a building is not used exclusively as a dwelling, it is characterized as a dwelling if there is internal communication between the two parts of the building.[6] Dwellings include mobile homes[7] and a boat, if the person resides on it.[8]

Observation:

A residential structure may lose its characteristic as a dwelling, for purposes of enhanced penalties to the arson statute for burning a dwelling, when there has been a prolonged vacancy, but a mere break in the occupancy of the dwelling does not thereby change its characteristic.[9]

Footnotes

1 State v. Finley, 34 Conn. App. 823, 644 A.2d 371 (1994).

2 State v. Myers, 313 S.C. 391, 438 S.E.2d 236 (1993).

3 People v. Vang, 1 Cal. App. 5th 377, 204 Cal. Rptr. 3d 455 (3d Dist. 2016), review denied, (Oct. 12, 2016).

4 Mason v. Superior Court, 242 Cal. App. 4th 773, 195 Cal. Rptr. 3d 527 (3d Dist. 2015), review denied, (Feb. 24, 2016).

5 People v. Vang, 1 Cal. App. 5th 377, 204 Cal. Rptr. 3d 455 (3d Dist. 2016), review denied, (Oct. 12, 2016).

6 Richmond v. State, 326 Md. 257, 604 A.2d 483 (1992).

7 State v. Jones, 110 N.C. App. 289, 429 S.E.2d 410 (1993).

8 State v. Myers, 313 S.C. 391, 438 S.E.2d 236 (1993).

9 U.S. v. J.D.P., 909 F. Supp. 2d 1136 (D.S.D. 2012).

End of Document

5 Am. Jur. 2d Arson and Related Offenses § 14

American Jurisprudence, Second Edition | May 2021 Update

Arson and Related Offenses

Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.

II. Elements of Offenses

A. Arson

2. Property Constituting Subject of Arson

§ 14. Outhouse and barn

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Arson 7, 8

An outhouse has been defined in connection with the crime of arson as a building adjacent to a dwelling house and subservient thereto, but distinct from the mansion house itself.[1] The word "outhouse," as it applies to arson statutes, is not limited in scope to outdoor toilets, but encompasses rather any "outbuilding." Examples of what constitutes an "outhouse" include a barn, a dairy, a toolhouse, as well as a shed, garage, or other storage building.[2]

Under the common law, the burning of a barn constituted arson only when the barn was a parcel of the dwelling house within the curtilage because it was considered part of the dwelling, or if it was not, when it contained hay or grain.[3] Statutes penalizing the malicious burning of a barn are now very general.[4] If there is an arson involving the burning of a barn, it is immaterial whether the barn contains hay or grain,[5] or whether it is located within the curtilage.[6]

Footnotes

1 State v. Myers, 313 S.C. 391, 438 S.E.2d 236 (1993).

2 State v. Woods, 109 N.C. App. 360, 427 S.E.2d 145 (1993).

3 Sublett v. Com., 18 Ky. L. Rptr. 100, 35 S.W. 543 (Ky. 1896).

4 State v. Myers, 313 S.C. 391, 438 S.E.2d 236 (1993).

5 Simpson v. State, 111 Ala. 6, 20 So. 572 (1896).

6 State v. Woods, 109 N.C. App. 360, 427 S.E.2d 145 (1993).

End of Document

5 Am. Jur. 2d Arson and Related Offenses § 15

American Jurisprudence, Second Edition | May 2021 Update

Arson and Related Offenses

Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.

II. Elements of Offenses

A. Arson

2. Property Constituting Subject of Arson

§ 15. Building or structure

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Arson 5

An arson statute is sometimes phrased in terms of intentional damage done to a "building."[1] A statute which prohibits the burning of certain designated types of buildings "or other buildings" has reference to any other building, whether it belongs to the same class therein described or not.[2] Where a statute prohibits the burning of "any building or erection used in carrying on any trade or manufacture," the word "used" means employed for a purpose and a single isolated instance may be sufficient to fulfill the meaning of the word. The word "trade" means more than traffic in goods, and the like; it is synonymous with occupation or calling and embraces any ordinary occupation or business, whether manual or mercantile.[3]

A defendant has been successfully prosecuted for burning an inhabited trailer under an arson statute defining a "building," in addition to its ordinary meaning, to include any watercraft, aircraft, trailer, sleeping car, railroad car or other structure or vehicle or any building with a valid certificate of occupancy.[4] A trailer to which the defendant set fire was a "building" within the meaning of the arson statute, even though no one was actually residing in the trailer on the day of the incident, where the trailer was a constructed edifice enclosed by walls, covered by a roof, and designed to stand permanently, and the trailer had furnishings for sleeping and had a bathroom and kitchen, was equipped with a power cord for immediate access to power and a propane tank that could be used to power the refrigerator and heaters, and was being used to secure the owners' property while they were remodeling the inside of their house.[5] The definition of a "building" has been found to include an abandoned building which is scheduled for demolition.[6] In some jurisdictions, automobiles have been included by the legislature in the definition of a "building"[7] or "structure" for purposes of the arson statute.[8]

The word structure has been interpreted by courts, for arson purposes, to include a jail,[9] automobile,[10] storehouse,[11] or other place customarily occupied by people.[12] Thus, even if a trailer to which the defendant set fire was not a "building" within the

meaning of an arson statute, the trailer was a "structure" used for overnight lodging within the meaning of the statute, although no one was actually residing in the trailer on the day of the incident, where the trailer was used for overnight lodging on vacations or weekend retreats, and the defendant had previously rented the trailer as overnight lodging for a period of four months.[13]

Footnotes

1 State v. Finley, 34 Conn. App. 823, 644 A.2d 371 (1994).

2 Petition of Weiss, 162 Mont. 532, 511 P.2d 1319 (1973).

Under one arson statute, although a structure is not always a dwelling, a dwelling is always a structure under the broad statutory definition of "structure." Moore v. State, 932 So. 2d 524 (Fla. 4th DCA 2006) (disapproved of on other grounds by, Stevens v. State, 226 So. 3d 787 (Fla. 2017)).

3 State v. Cuthrell, 235 N.C. 173, 69 S.E.2d 233 (1952).

4 State v. Finley, 34 Conn. App. 823, 644 A.2d 371 (1994).

5 People v. Norcutt, 115 A.D.3d 1306, 982 N.Y.S.2d 661 (4th Dep't 2014).

6 State v. Domian, 35 Conn. App. 714, 646 A.2d 940 (1994), judgment aff'd, 235 Conn. 679, 668 A.2d 1333 (1996).

As to arson in connection with demolished buildings, see § 16.

7 Com. v. Cross, 769 S.W.2d 63 (Ky. Ct. App. 1988).

8 State v. Williams, 263 N.J. Super. 620, 623 A.2d 800 (App. Div. 1993).

9 Granville v. State, 373 So. 2d 716 (Fla. 1st DCA 1979).

10 State v. Williams, 263 N.J. Super. 620, 623 A.2d 800 (App. Div. 1993).

11 Hoey v. State, 311 Md. 473, 536 A.2d 622 (1988).

A store to which defendant attempted to set fire was a structure used for storage and thus constituted a "storehouse" as contemplated in an arson statute, thus supporting the defendant's conviction for attempted arson; evidence showed that the store had a room where grain or feed was stored, and the goods sold at the store were also stored there until purchased by customers. Wilson v. Com., 66 Va. App. 9, 781 S.E.2d 754 (2016).

12 State ex rel. Juvenile Dept. of Josephine County v. Roff, 94 Or. App. 430, 765 P.2d 244 (1988).

13 People v. Norcutt, 115 A.D.3d 1306, 982 N.Y.S.2d 661 (4th Dep't 2014).

5 Am. Jur. 2d Arson and Related Offenses § 16

American Jurisprudence, Second Edition | May 2021 Update

Arson and Related Offenses

Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.

II. Elements of Offenses

A. Arson

2. Property Constituting Subject of Arson

§ 16. Building or structure—Incomplete, unoccupied, abandoned, or demolished buildings

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Arson 5, 8, 40

At common law and under many arson statutes, an unfinished or incomplete building which has not yet been occupied will not be regarded as a "dwelling," even though designed as a dwelling house and destined to be so used on completion.[1] The reason for this is that if no one resides there, the potential threat or risk to human life, and the corresponding aggravation in the degree of the crime charged, is not warranted. Generally, the dwelling must have some person residing in it at the time of the arson to have it qualify as a dwelling.[2] For purposes of an arson statute distinguishing degrees of arson on the basis of whether or not the building burned was inhabited, the distinguishing characteristic of an inhabited building is said to be whether any part of it is normally used by any person for lodging.[3] An "inhabited structure," for purposes of arson of an inhabited structure, is one currently being used for residential purposes, even if it is temporarily unoccupied, i.e., if no person is present at the time of the arson.[4] A building which contains an apartment, intended for habitation, whether occupied, unoccupied or vacant, is a "dwelling house" for purposes of the statute defining first degree arson.[5]

An abandoned, vandalized building which is going to be demolished has been considered a building for arson purposes.[6] A house which the victim had purchased was a "dwelling" for purposes of an arson statute, where the victim was in the process of remodeling house, and spent time at the house several times a day, the victim had moved furniture, clothes, appliance and other items into the house, and, while it was uncertain when the victim and the family were to take up permanent residency in house, it was clear that they intended to do so in the near future.[7] However, a building must be capable of being occupied as a residence in order to be classified as a dwelling under an arson statute defining the crime as the burning of a "dwelling house."[8] Moreover, a building will not be considered a dwelling where the property is abandoned with no intent on the part of the former occupants to return,[9] or where there was a physical eviction with no one showing an intent to use the building in the future as a dwelling.[10]

The question of whether a structure has arrived at such a stage of completion as to constitute it as a building may be, and frequently is, a question for the jury.[11]

Footnotes

1 Daniels v. Com., 172 Va. 583, 1 S.E.2d 333 (1939).

2 State v. Bartnick, 478 N.W.2d 878 (Iowa Ct. App. 1991).

3 Kreijanovsky v. State, 1985 OK CR 120, 706 P.2d 541 (Okla. Crim. App. 1985).

4 People v. Baker, 204 Cal. App. 4th 1234, 139 Cal. Rptr. 3d 594 (4th Dist. 2012).

5 Damron v. Haines, 223 W. Va. 135, 672 S.E.2d 271 (2008).

6 State v. Domian, 35 Conn. App. 714, 646 A.2d 940 (1994), judgment aff'd, 235 Conn. 679, 668 A.2d 1333 (1996).

7 White v. State, 846 N.E.2d 1026 (Ind. Ct. App. 2006).

8 Com. v. DeStefano, 16 Mass. App. Ct. 208, 450 N.E.2d 637 (1983).

9 State v. Scarberry, 187 W. Va. 251, 418 S.E.2d 361 (1992).

10 People v. Jones, 199 Cal. App. 3d 543, 245 Cal. Rptr. 85 (2d Dist. 1988).

11 State v. Cuthrell, 235 N.C. 173, 69 S.E.2d 233 (1952).

5 Am. Jur. 2d Arson and Related Offenses § 17

American Jurisprudence, Second Edition | May 2021 Update

Arson and Related Offenses

Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.

II. Elements of Offenses

A. Arson

2. Property Constituting Subject of Arson

§ 17. Value of property

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Arson 6

The value of the property burned was not an element of the offense of arson at common law,[1] and it is not important under a statute which does not specify that the property burned must be of a particular value making it an element of the offense.[2] For instance, the State had no obligation to prove the value of repairs or destroyed items since the offense of fourth degree arson had no element of value.[3] However, statutes in some jurisdictions require that the property burned be of a stated value.[4] A statute making it a criminal offense to burn insured property with the intent to injure or defraud the insurer may require that the property burned be of a specified value.[5]

Observation:

The term "valued at" in a statute providing that a person is guilty of arson in the first degree if the person knowingly and maliciously causes a fire or explosion on property valued at $10,000 or more with intent to collect insurance proceeds refers to the fair market value of the property.[6]

Footnotes

1 McClaine v. Territory, 1 Wash. 345, 25 P. 453 (1890).

2 People v. Losinger, 331 Mich. 490, 50 N.W.2d 137, 44 A.L.R.2d 1449 (1951).

3 Thomas v. State, 48 So. 3d 460 (Miss. 2010), as modified on denial of reh'g, (Dec. 2, 2010).

4 Jackson v. State, 1991 OK CR 103, 818 P.2d 910 (Okla. Crim. App. 1991).

5 Hamm v. Com., 16 Va. App. 150, 428 S.E.2d 517 (1993).

6 State v. Sweany, 174 Wash. 2d 909, 281 P.3d 305 (2012).

End of Document

5 Am. Jur. 2d Arson and Related Offenses II B Refs.

American Jurisprudence, Second Edition | May 2021 Update

Arson and Related Offenses
Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.

II. Elements of Offenses

B. Other Crimes Involving Burning

Topic Summary | Correlation Table

Research References

West's Key Number Digest

West's Key Number Digest, Arson 11, 13, 37(3)

A.L.R. Library

A.L.R. Index, Arson
A.L.R. Index, Criminal Law
West's A.L.R. Digest, Arson 11, 13, 37(3)

End of Document

5 Am. Jur. 2d Arson and Related Offenses § 18

American Jurisprudence, Second Edition | May 2021 Update

Arson and Related Offenses

Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.

II. Elements of Offenses

B. Other Crimes Involving Burning

§ 18. Attempt to commit arson

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Arson 13

In order to establish an attempt to commit arson, it must appear that the defendant had a specific intent to commit the crime and did a direct, unequivocal act toward that end; preparation alone is not enough, and some appreciable fragment of the crime must have been accomplished.[1] A conviction for the attempt to burn personal property was supported by evidence that the defendant set fire to a box of items in the victim's apartment and placed the box in a hole in the wall, even though the jury could have concluded that the defendant actually achieved the substantive crime of arson rather than attempt.[2]

The act which gives rise to liability for attempted arson need not be the final one towards the completion of the offense, but it must carry the project forward within dangerous proximity to the criminal end to be attained.[3] The placing or distributing of any inflammable, explosive or combustible material or substance, or any device in any buildings or property, in an arrangement or preparation with the intent to eventually, willfully and maliciously set fire to or burn the structure constitutes an attempt to burn the building or property.[4] For instance, splashing gasoline on the walls of a structure has been found to constitute a "substantial step" toward committing arson.[5] Likewise, sufficient evidence supported a defendant's conviction for attempted arson where: the defendant was familiar with the house that was set on fire and the alarm system within it, having lived there while the defendant was married, the defendant, once in the house, dismantled the gas stove to allow natural gas to flow into the kitchen, turned the stove on, retrieved a candle from a bedroom, placed the candle directly beside the stove, and lit the candle, and the defendant carved the words "you're next" onto storage shed.[6]

Caution:

It has been held that there can be no charge of attempted arson where the degree of the underlying offense involves recklessly causing damage to a building or motor vehicle by starting a fire or causing an explosion. Since a person is guilty of an attempt to commit a crime only when the person intends to commit that crime, a defendant cannot be guilty of attempt with respect to a crime the gravamen of which is reckless behavior.[7]

Footnotes

1 People v. Carrasco, 163 Cal. App. 4th 978, 77 Cal. Rptr. 3d 912 (2d Dist. 2008), as modified on denial of reh'g, (July 2, 2008).

2 Com. v. Coutu, 90 Mass. App. Ct. 227, 58 N.E.3d 372 (2016).

3 People v. Johnson, 186 A.D.2d 363, 588 N.Y.S.2d 162 (1st Dep't 1992).

4 State v. Davis, 178 W. Va. 87, 357 S.E.2d 769 (1987) (overruled on other grounds by, State ex rel. R.L. v. Bedell, 192 W. Va. 435, 452 S.E.2d 893 (1994)).

5 State v. Ailshire, 664 S.W.2d 630 (Mo. Ct. App. W.D. 1984).

6 Davis v. Com., 65 Va. App. 485, 778 S.E.2d 557 (2015).

7 People v. De Jesus, 190 A.D.2d 1012, 593 N.Y.S.2d 633 (4th Dep't 1993).

End of Document

5 Am. Jur. 2d Arson and Related Offenses § 19

American Jurisprudence, Second Edition | May 2021 Update

Arson and Related Offenses
Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.

II. Elements of Offenses

B. Other Crimes Involving Burning

§ 19. Burning to injure or defraud insurer

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Arson 11, 37(3)

Trial Strategy

Arson Defense to Coverage Under Property Insurance, 34 Am. Jur. Proof of Facts 3d 291

The essence of the offense of burning insured property to injure or defraud the insurer is a malicious burning of property[1] with an intent to injure or defraud an insurer.[2] The intention to defraud is the controlling element of the crime[3] and such intent must generally be proven by analyzing the evidence surrounding the suspicious fire.[4]

The amount of insurance and even the absence of valid insurance are irrelevant for this offense as long as the defendant believes that the insurance is valid.[5] In addition, the fact that all or some of the insurance proceeds will not be going to the defendant, but to a third person, does not affect liability under some state statutes.[6]

Footnotes

1 Hamm v. Com., 16 Va. App. 150, 428 S.E.2d 517 (1993).

2 Richmond v. State, 326 Md. 257, 604 A.2d 483 (1992).

3 State v. Burroff, 598 N.E.2d 1081 (Ind. Ct. App. 1992).

4 State v. McDonald, 230 Neb. 85, 430 N.W.2d 282 (1988).

5 State v. Burroff, 598 N.E.2d 1081 (Ind. Ct. App. 1992).

6 Com. v. Vellucci, 284 Mass. 443, 187 N.E. 909 (1933).

End of Document

5 Am. Jur. 2d Arson and Related Offenses III A Refs.

American Jurisprudence, Second Edition | May 2021 Update

Arson and Related Offenses

Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.

III. Persons Liable

A. Arson

Topic Summary | Correlation Table

Research References

West's Key Number Digest

West's Key Number Digest, Arson 15

A.L.R. Library

A.L.R. Index, Arson
A.L.R. Index, Criminal Law
West's A.L.R. Digest, Arson 15

End of Document

5 Am. Jur. 2d Arson and Related Offenses § 20

American Jurisprudence, Second Edition | May 2021 Update

Arson and Related Offenses

Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.

III. Persons Liable

A. Arson

§ 20. Owner or occupier of property

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Arson 15

At common law, because a person, to be guilty of arson, must have burned the house of "another," and because possession, not ownership, determined to whom the house belonged,[1] the burning of one's own house while in possession thereof was not a criminal offense,[2] although an owner who burned it while it was in the lawful possession of another was guilty of arson.[3] Many jurisdictions now make it arson for a person to burn property owned or occupied by that same person.[4]

If the owner in possession is not guilty of arson in burning such owner's property, then one who assists the owner in burning it or who burns it at the owner's request is not guilty of arson.[5]

Observation:

While one who assists the owner of property may not be guilty of arson, such person may be subject to criminal liability under a related statute prohibiting burning with intent to injure or defraud an insurer, where the elements of the latter crime do not require that the burning be a willful burning of the property of another as defined in the arson statute.[6] The enactment of a statute which makes a party who willfully and maliciously burns such party's own property guilty of arson is not constitutionally objectionable either as an arbitrary interference with a property right, or as being too indefinite to constitute a reasonable standard of conduct.[7] In addition, a statute making it a crime to burn "a" or "any" dwelling house is broad enough to include a burning by the owner.[8] Furthermore, under a statute defining arson as the willful setting of fire to or burning of a dwelling house in which there is at the time a human being, ownership of the property is immaterial, and therefore an owner can be guilty of arson as the core of the offense consists not in the injury to the building but in the danger to the persons occupying the building.[9]

CUMULATIVE SUPPLEMENT

Cases:

The arson statute includes within its terms the burning of one's own dwelling. Mass. Gen. Laws Ann. ch. 266, § 1. Commonwealth v. Pfeiffer, 482 Mass. 110, 121 N.E.3d 1130 (2019).

[END OF SUPPLEMENT]

Footnotes

1 § 12.
2 Com. v. Makely, 131 Mass. 421, 1881 WL 14661 (1881).
3 Daniels v. Com., 172 Va. 583, 1 S.E.2d 333 (1939).
4 State v. Williams, 154 Vt. 76, 574 A.2d 1264 (1990).
5 State v. Christendon, 205 Kan. 28, 468 P.2d 153 (1970).
6 State v. Christendon, 205 Kan. 28, 468 P.2d 153 (1970).
As to a burning to injure or defraud an insurer, see § 19.
7 Love v. State, 107 Fla. 376, 144 So. 843 (1932).
8 State v. Burroff, 598 N.E.2d 1081 (Ind. Ct. App. 1992).
9 State v. Campbell, 332 N.C. 116, 418 S.E.2d 476 (1992).

5 Am. Jur. 2d Arson and Related Offenses § 21

American Jurisprudence, Second Edition | May 2021 Update

Arson and Related Offenses

Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.

III. Persons Liable

A. Arson

§ 21. Husband or wife of owner

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Arson 15

The rule at common law was well settled that where a husband and wife were in rightful possession and jointly occupying property belonging to one of them, the other would not be guilty of arson in burning the property, both because arson was an offense against the possession as such and not against the property, and also because the husband and wife were regarded as one, and property occupied by them could not be deemed the property of "another."[1] However, statutes have been enacted in most jurisdictions abrogating the common-law rule as to the unity under the law between husband and wife, so that under a statute defining arson as the burning of the property "of another" a husband or wife may be guilty of arson if one spouse burns the property of the other spouse.[2]

Under a statute making it arson for a person to willfully burn "a dwelling house," a husband may be guilty of arson for the burning of the wife's dwelling, regardless of whether it is[3] or is not their joint abode.[4] Similarly, a husband may commit arson in burning the wife's house under a statute defining arson as the burning of a dwelling house "whether the property of oneself or of another."[5] Where the respective interests of a husband and wife in community property are "present, existing, and equal" a husband may be convicted of arson of the community property, even though management and control of the entire community estate is, by statute, vested in the husband, for the position of the husband is analogous to that of a fiduciary, partner, or agent and the husband does not have the power, insofar as the wife is concerned, to burn it without consequences.[6]

Footnotes

1 Daniels v. Com., 172 Va. 583, 1 S.E.2d 333 (1939).

2 State v. Regan, 51 Ohio App. 3d 214, 555 N.E.2d 987 (9th Dist. Wayne County 1988).

3 State v. Zemple, 196 Minn. 159, 264 N.W. 587 (1936).

4 State v. Roth, 117 Minn. 404, 136 N.W. 12 (1912).

5 Daniels v. Com., 172 Va. 583, 1 S.E.2d 333 (1939).

6 People v. Schlette, 139 Cal. App. 2d 165, 293 P.2d 79 (1st Dist. 1956).

End of Document

5 Am. Jur. 2d Arson and Related Offenses § 22

American Jurisprudence, Second Edition | May 2021 Update

Arson and Related Offenses

Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.

III. Persons Liable

A. Arson

§ 22. Person who aids, counsels, or procures burning

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Arson 15

At common law and under statutes which define arson as the burning of the house "of another," a person who burns such person's own dwelling is not guilty of arson,[1] and neither is such party guilty if the party procures another to do the burning.[2] However, if a person can be guilty of arson when that party personally sets the fire, the person may also be guilty even though the person merely is present and aids or abets, incites, encourages, instigates, counsels or procures another to do the actual starting of the fire.[3]

The statutory language in certain states specifically provides that a person who willfully and maliciously sets fire to or burns or causes to be burned or who "aids, counsels or procures the burning" of the property designated is guilty of arson.[4] Arson under such a statute includes not only the physical act of setting fire to a building but also the act of aiding, counseling, or procuring another to do so, and a person who aids, counsels, or procures is made a principal, and is subject to the same punishment as though that person personally, had actually burned it, and that party's act in so counseling, aiding, or procuring it is in itself a substantive offense.[5] "Counseling" means counseling the burning of a building which has in fact been burned, and not merely counseling a crime which was never committed.[6] In addition, if a person threatens another with bodily harm if that person does not do as requested, the antagonizer is guilty of "procurement."[7] A conviction for aiding the consummation of a felony, specifically arson, was not incompatible with a conviction for arson as a principal; conduct by which the defendant aided and abetted the arson must have occurred before or during the commission of the arson, whereas aiding the consummation of a felony was concerned with conduct that occurred after the felony was committed.[8]

Aiding, counseling, or procuring of the burning, as alternative elements of a state arson statute, do not mandate that the defendant acted "willfully and maliciously," but require some purpose and knowledge directed towards the acts of aiding, counseling, or procuring, not towards the actual burning.[9] Evidence was sufficient to establish that the defendant, a union manager, was

aware of and encouraged union members to engage in sabotage and arson at certain nonunion worksites, as required to support a conviction for aiding and abetting arson; direct evidence established that the defendant acquired a small acetylene torch which the defendant provided to other union members while possessing specific intent that they conduct acts of arson, witness testimony established that the defendant was engaged in transferring the torch between union members, and recorded phone conversations indicated that the defendant was aware that the torch was being used for arson.[10]

Observation:

In order to have aided and abetted the commission of arson, the government must prove that the juvenile, either before or at the time of the crime (1) knew that arson was being committed or going to be committed; (2) must have associated with the arson; (3) must have acted knowingly in some way for the purpose of causing, encouraging, or aiding in the commission of arson; and (4) must have engaged in a willful and malicious act.[11]

In any case, one who procures, counsels, or commands another to commit the crime may withdraw before the act is done and avoid criminal responsibility by communicating the fact of such withdrawal to the party who is to commit the crime.[12]

Footnotes

1 § 12.

2 State v. Beckwith, 135 Me. 423, 198 A. 739 (1938).

3 State v. Williams, 263 N.J. Super. 620, 623 A.2d 800 (App. Div. 1993).

4 Richmond v. State, 326 Md. 257, 604 A.2d 483 (1992).
A statute governing the offense of first degree arson does not require that the accused personally set the fire or possess ignitable materials; the evidence is sufficient where the defendant knowingly damages or knowingly aids or abets another to damage property by adding fuel to a fire. Vega v. State, 285 Ga. 32, 673 S.E.2d 223 (2009).

5 Richmond v. State, 326 Md. 257, 604 A.2d 483 (1992).

6 Wimpling v. State, 171 Md. 362, 189 A. 248 (1937).

7 State v. Sargent, 22 N.C. App. 148, 205 S.E.2d 768 (1974).

8 State v. Hansen, 289 Neb. 478, 855 N.W.2d 777 (2014).

9 United States v. Webb, 217 F. Supp. 3d 381 (D. Mass. 2016).

10 U.S. v. Dougherty, 117 F. Supp. 3d 646 (E.D. Pa. 2015), aff'd, 706 Fed. Appx. 736 (3d Cir. 2017).

11 U.S. v. J.D.P., 909 F. Supp. 2d 1136 (D.S.D. 2012).

12 State v. Peterson, 213 Minn. 56, 4 N.W.2d 826 (1942).

End of Document

5 Am. Jur. 2d Arson and Related Offenses III B Refs.

American Jurisprudence, Second Edition | May 2021 Update

Arson and Related Offenses

Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.

III. Persons Liable

B. Burning to Injure or Defraud Insurer

Topic Summary | Correlation Table

Research References

West's Key Number Digest

West's Key Number Digest, Arson 15, 37(3)

A.L.R. Library

A.L.R. Index, Arson
A.L.R. Index, Criminal Law
West's A.L.R. Digest, Arson 15, 37(3)

End of Document

5 Am. Jur. 2d Arson and Related Offenses § 23

American Jurisprudence, Second Edition | May 2021 Update

Arson and Related Offenses

Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.

III. Persons Liable

B. Burning to Injure or Defraud Insurer

§ 23. Persons liable for burning to injure or defraud insurer, generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Arson 15, 37(3)

Trial Strategy

Arson Defense to Coverage Under Property Insurance, 34 Am. Jur. Proof of Facts 3d 291

As a result of the common law doctrine that arson was an offense against the possession rather than the property,[1] an person who set fire to a house owned by such person while occupying it was not guilty of arson, even though it was burned for the purpose of defrauding the insurer.[2] So also, one who assisted the owner in burning such house was not guilty of arson.[3] Statutes in some states provide that a person who burns insured property with intent to injure or defraud an insurer is guilty of arson irrespective of whether the property is owned by that person or belongs to someone else.[4] Statutes in other jurisdictions merely provide that whoever willfully and maliciously burns insured property with the intent to injure or defraud the insurer is guilty of a criminal offense, and under such a statute, anyone who commits such an act is guilty of arson whether the property is owned by that person, or is owned by another, and regardless of in whose name the property is insured.[5] At least one state makes it arson in the first degree to give part of the insurance proceeds for defrauding an insurance company as payment to the person who started the fire.[6]

Footnotes

1 § 1.
2 State v. Greer, 243 Mo. 599, 147 S.W. 968 (1912).
3 State v. Haynes, 66 Me. 307, 1876 WL 4361 (1876).
4 Com. v. Cross, 769 S.W.2d 63 (Ky. Ct. App. 1988).
5 Hamm v. Com., 16 Va. App. 150, 428 S.E.2d 517 (1993).
6 State v. Chiarulli, 234 N.J. Super. 192, 560 A.2d 717 (App. Div. 1989).

End of Document

5 Am. Jur. 2d Arson and Related Offenses § 24

American Jurisprudence, Second Edition | May 2021 Update

Arson and Related Offenses

Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.

III. Persons Liable

B. Burning to Injure or Defraud Insurer

§ 24. Person who aids, counsels, or procures burning

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Arson 15, 37(3)

Trial Strategy

Arson Defense to Coverage Under Property Insurance, 34 Am. Jur. Proof of Facts 3d 291

In the absence of a statute making it a criminal offense, a person who burns such person's own property is not guilty of arson even though the person burns it for the purpose of defrauding the insurer,[1] and neither is such person liable as an accessory to the burning thereof by others.[2] So also, one who is not the owner, if present, aiding or assisting in the burning, or, if not present, counseling, aiding, abetting, or helping in the collection of fraudulently induced insurance proceeds in the burning by the owner, tenant, or occupant, may be proceeded against as principal.[3]

Statutes exist in some states which provide that any person who willfully and with intent to injure or defraud the insurer sets fire to or burns or causes to be burned or who "aids, counsels or procures the burning" of insured property is guilty of arson.[4] A person may be guilty of counseling another to set fire to insured property for the purpose of defrauding the insurer even though the wrongful act is not done and the insured property is not actually burned.[5] Similarly, under a statute providing that any person who pays or accepts consideration for the purpose of starting a fire or causing an explosion is guilty of first degree arson, it has been held that the one who has procured the burning may be guilty even though no money ever changed hands between such person and the person who actually perpetrated the crime.[6]

Footnotes

1 § 12.

2 State v. Sarvis, 45 S.C. 668, 24 S.E. 53 (1896).

3 Commonwealth ex rel. Giuffrida v. Ashe, 137 Pa. Super. 528, 10 A.2d 112 (1939).

4 Brower v. State, 217 Miss. 425, 64 So. 2d 576 (1953).

5 State v. Blechman, 135 N.J.L. 99, 50 A.2d 152 (N.J. Sup. Ct. 1946).

6 State v. Chiarulli, 234 N.J. Super. 192, 560 A.2d 717 (App. Div. 1989).

End of Document

5 Am. Jur. 2d Arson and Related Offenses IV Refs.

American Jurisprudence, Second Edition | May 2021 Update

Arson and Related Offenses

Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.

IV. Defenses

Topic Summary | Correlation Table

Research References

West's Key Number Digest

West's Key Number Digest, Arson 14

A.L.R. Library

A.L.R. Index, Arson
A.L.R. Index, Consent
A.L.R. Index, Criminal Law
West's A.L.R. Digest, Arson 14

End of Document

5 Am. Jur. 2d Arson and Related Offenses § 25

American Jurisprudence, Second Edition | May 2021 Update

Arson and Related Offenses

Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.

IV. Defenses

§ 25. Defenses to arson, generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Arson 14

A.L.R. Library

Pyromania and the criminal law, 51 A.L.R.4th 1243

Trial Strategy

Arson Defense to Coverage Under Property Insurance, 34 Am. Jur. Proof of Facts 3d 291

Preparation and Trial of Arson Case, 19 Am. Jur. Trials 685

A person, to be guilty of the crime of arson, must have the capacity to commit a criminal act. It has been said that there is no criminal responsibility where at the time of committing the act the accused was laboring under such a defect of reason and disease of the mind that the accused did not know the nature and quality of the act the accused was doing.[1] Even if a person does not know the nature and quality of actions, the person can still have the general intent required for an arson conviction,[2] for simple arson is a general intent crime.[3] Under an arson statute defining first degree arson as the "willful" burning of a structure, specific intent is not an element of the crime, and thus evidence of diminished capacity cannot constitute a defense to the crime.[4] In some states that view arson as a specific intent crime, intoxication, if it can explain defendant's actions, can be a defense to the crime of arson because it could negate specific intent.[5]

Infancy is generally not a defense to the crime of arson for minors if they can form the requisite intent.[6] In arson, as in other crimes, impossibility is not a defense[7] and a defendant is not entrapped if the defendant has the propensity to commit the crime.[8]

Footnotes

1 State v. Bergstrom, 413 N.W.2d 206 (Minn. Ct. App. 1987).

2 State v. Bartnick, 478 N.W.2d 878 (Iowa Ct. App. 1991).

3 State v. Jackson, 132 So. 3d 516 (La. Ct. App. 2d Cir. 2014), writ denied, 148 So. 3d 952 (La. 2014) and writ denied, 149 So. 3d 260 (La. 2014).

4 State v. Nelson, 17 Wash. App. 66, 561 P.2d 1093 (Div. 2 1977).

5 State v. Battin, 474 N.W.2d 427 (Minn. Ct. App. 1991).

6 State v. Plewak, 46 Wash. App. 757, 732 P.2d 999 (Div. 2 1987).

7 State v. Burroff, 598 N.E.2d 1081 (Ind. Ct. App. 1992).

8 U.S. v. Kaminski, 703 F.2d 1004 (7th Cir. 1983).

5 Am. Jur. 2d Arson and Related Offenses § 26

American Jurisprudence, Second Edition | May 2021 Update

Arson and Related Offenses

Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.

IV. Defenses

§ 26. Consent or ratification by owner

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Arson 14

Trial Strategy

Arson Defense to Coverage Under Property Insurance, 34 Am. Jur. Proof of Facts 3d 291

Some state statutes make the absence of the owner's consent to burn the property an element of the crime of arson[1] and since the state has the burden of proof on all the elements of the offense,[2] an owner's consent is a defense to the crime of arson in the jurisdictions that make consent a statutory element.[3] An act of burning is not criminal if all of the owners and also the lien holder of the vehicle consent to the burning.[4]

Ratification by the owner of the burning of property after criminal proceedings have been started does not lessen the crime or change its status as of the time it was committed.[5]

Footnotes

1 Williams v. State, 600 N.E.2d 962 (Ind. Ct. App. 1992).

2 Hamm v. Com., 16 Va. App. 150, 428 S.E.2d 517 (1993).

3 Ex parte Davis, 548 So. 2d 1041 (Ala. 1989).

4 Prater v. State, 279 Ga. App. 527, 631 S.E.2d 746 (2006).

5 State v. Craig, 124 Kan. 340, 259 P. 802, 54 A.L.R. 1233 (1927).

End of Document

5 Am. Jur. 2d Arson and Related Offenses § 27

American Jurisprudence, Second Edition | May 2021 Update

Arson and Related Offenses

Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.

IV. Defenses

§ 27. Former jeopardy

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Arson 14

Trial Strategy

Arson Defense to Coverage Under Property Insurance, 34 Am. Jur. Proof of Facts 3d 291

With respect to the double prosecution issue, there is no double jeopardy when the second offense the defendant is being prosecuted for has an additional or different element to be proven that wasn't required for the first offense on which the defendant was acquitted.[1] However, if the second offense is a lesser included offense of the first offense from which the defendant was acquitted, then the second prosecution is barred because of double jeopardy.[2] In addition, a second prosecution is not barred where the two acts that the defendant is being prosecuted for are separate and distinct offenses. For instance, where the accused is charged with the burning of certain personal property which is alleged to belong to the accused and a motion for a directed verdict is granted on the ground that there was a fatal variance in that the property was shown to belong to another, the accused may be tried upon a second information charging the accused with the burning of the same property which is alleged to belong to that other person, for the two informations charge two separate and distinct offenses and different testimony is needed to convict on each information.[3]

Under a statute punishing as a principal one who burns or causes to be burned, or who aids, counsels, or procures the burning of specified property, acquittal on one count in an indictment charging that the accused burned the property will not bar prosecution on two other separate counts that the accused caused the property to be burned and that the accused aided, counseled, and procured the burning.[4] However, if the accused is charged with setting fire to and burning certain property, proof of the commission of either act charged is sufficient to warrant conviction, and conviction under the indictment will bar further

prosecution for either setting fire to or burning.[5] It is not double jeopardy, however, if there are multiple convictions and punishments for multiple burnings as in the case of the burning of an apartment building because each apartment is considered a separate dwelling.[6] There is also no double jeopardy where one charge is for conspiracy to burn property with intent to defraud the insurer and the other is for the offense of burning insured property to injure or defraud the insurer.[7]

Footnotes

1 Alexander v. State, 600 N.E.2d 549 (Ind. Ct. App. 1992), on reh'g, (Aug. 10, 1992).

2 State v. Midgeley, 15 N.J. 574, 105 A.2d 844 (1954).

3 State v. Cootner, 60 So. 2d 734 (Fla. 1952).

4 State v. Simon, 114 N.J.L. 551, 178 A. 192 (N.J. Sup. Ct. 1935), aff'd, 116 N.J.L. 134, 182 A. 631 (N.J. Ct. Err. & App. 1936).

5 Hurst v. State, 118 Fla. 877, 160 So. 355 (1935).

6 Richmond v. State, 326 Md. 257, 604 A.2d 483 (1992).

7 People v. Darr, 255 Ill. 456, 99 N.E. 651 (1912).

5 Am. Jur. 2d Arson and Related Offenses V A Refs.

American Jurisprudence, Second Edition | May 2021 Update

Arson and Related Offenses

Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.

V. Prosecution and Trial

A. Indictment and Information

Topic Summary | Correlation Table

Research References

West's Key Number Digest

West's Key Number Digest, Arson 12, 13, 17 to 25, 37(3), 39

A.L.R. Library

A.L.R. Index, Arson
A.L.R. Index, Criminal Law
A.L.R. Index, Evidence
A.L.R. Index, Indictments and Informations
West's A.L.R. Digest, Arson 12, 13, 17 to 25, 37(3), 39

End of Document

5 Am. Jur. 2d Arson and Related Offenses § 28

American Jurisprudence, Second Edition | May 2021 Update

Arson and Related Offenses

Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.

V. Prosecution and Trial

A. Indictment and Information

1. In General

§ 28. Arson

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Arson 39

Legal Encyclopedias

As to the nature, validity and effect of accusatory instruments, generally, see: Am. Jur. 2d, Indictments and Informations [Westlaw®(r): Search Query]

Trial Strategy

Preparation and Trial of Arson Case, 19 Am. Jur. Trials 685 § 25 (Indictment)

An indictment or information for the crime of arson should allege all the essential elements of the crime, and if the particular arson statute makes ownership or possession an element of the offense,[1] the ownership or possession of the property burned, the name of the person accused of the crime, the time and place when and where it is claimed that the accused committed the act,[2] together with a description of the property burned, should also be included.[3] In addition, establishing a particular degree of arson may require an allegation as to the time of burning, whether the building was occupied, and the value of the property burned.[4]

Where the amount of damage is essential to determine the grade of the offense for simple arson, the failure to allege the amount of damage in the bill of information is an error.[5] Thus, a bill of information charging the defendant with simple arson and the theft of a motor vehicle was defective, where it did not specify the grade of the offense, based on the monetary value of the motor vehicle allegedly subjected to arson and theft.[6] On the other hand, an indictment charging the defendant with aggravated arson was not defective for failing to allege that the property at issue belonged to another and had a specific dollar value, where the indictment contained language appropriate to the charged offense and language relevant to ownership and value was not required.[7]

The crime of arson is local in nature, and while it must appear that the offense was committed within the jurisdiction of the court, the precise location of the property involved need not be given. It is sufficient, following an allegation as to the date, county, and state of the alleged offense, to localize the property within that county by the use of a phrase such as that the accused "did then and there" commit the act; the words "then and there" having reference to the time and county previously stated.[8]

Footnotes

1 People v. Thomas, 137 Ill. 2d 500, 148 Ill. Dec. 751, 561 N.E.2d 57 (1990).

2 Horne v. State, 749 S.W.2d 74 (Tex. Crim. App. 1988).

3 State v. Seifert, 151 Vt. 66, 557 A.2d 494 (1989).

4 Jackson v. State, 1991 OK CR 103, 818 P.2d 910 (Okla. Crim. App. 1991).

5 State v. Fuller, 130 So. 3d 960 (La. Ct. App. 2d Cir. 2013).

6 State v. Toussaint, 94 So. 3d 62 (La. Ct. App. 3d Cir. 2012), writ denied, 102 So. 3d 30 (La. 2012).

7 State v. McKithern, 93 So. 3d 684 (La. Ct. App. 3d Cir. 2012), writ denied, 108 So. 3d 782 (La. 2013).

8 State v. Hinn, 229 Neb. 556, 427 N.W.2d 791 (1988).

5 Am. Jur. 2d Arson and Related Offenses § 29

American Jurisprudence, Second Edition | May 2021 Update

Arson and Related Offenses

Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.

V. Prosecution and Trial

A. Indictment and Information

1. In General

§ 29. Burning to injure or defraud insurer

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Arson 37(3), 39

Trial Strategy

Arson Defense to Coverage Under Property Insurance, 34 Am. Jur. Proof of Facts 3d 291

An indictment or information for the offense of burning insured property to injure or defraud the insurer should allege that the accused willfully and maliciously burned or set fire to specified property which was insured at the time,[1] and that the burning was done with an intent to charge, injure, defraud, or prejudice the insurer.[2]

In a jurisdiction where it is required that there be a valid insurance policy,[3] the indictment must contain an allegation charging that there was an insurance policy in full force and effect.[4]

Footnotes

1 State v. Hinn, 229 Neb. 556, 427 N.W.2d 791 (1988).

2 State v. Carson, 453 N.W.2d 485 (N.D. 1990).

3 Wells v. State, 521 So. 2d 1274 (Miss. 1987).

4 State v. Hinn, 229 Neb. 556, 427 N.W.2d 791 (1988).

End of Document

5 Am. Jur. 2d Arson and Related Offenses § 30

American Jurisprudence, Second Edition | May 2021 Update

Arson and Related Offenses

Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.

V. Prosecution and Trial

A. Indictment and Information

1. In General

§ 30. Attempt to commit offense

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Arson 13, 24

The indictment or information for an attempt to commit arson or to burn insured property to injure or defraud the insurer should allege all the essential elements of the crime,[1] with the exception that instead of alleging that the accused willfully and maliciously burned the property in question, it should be alleged that the accused did willfully and maliciously or feloniously attempt to set fire to or burn, or did set fire to and attempt to burn the property.[2]

As to the detail required in alleging an attempt to commit arson, in some states the pleading must allege the overt act which constitutes the attempt.[3]

Footnotes

1 U.S. v. Fakhoury, 819 F.2d 1415, 23 Fed. R. Evid. Serv. 42 (7th Cir. 1987).

2 State v. Davis, 178 W. Va. 87, 357 S.E.2d 769 (1987) (overruled on other grounds by, State ex rel. R.L. v. Bedell, 192 W. Va. 435, 452 S.E.2d 893 (1994)).

3 State v. Davis, 178 W. Va. 87, 357 S.E.2d 769 (1987) (overruled on other grounds by, State ex rel. R.L. v. Bedell, 192 W. Va. 435, 452 S.E.2d 893 (1994)).

End of Document

5 Am. Jur. 2d Arson and Related Offenses § 31

American Jurisprudence, Second Edition | May 2021 Update

Arson and Related Offenses

Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.

V. Prosecution and Trial

A. Indictment and Information

1. In General

§ 31. Multiplicity in charging of arson and related crimes

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Arson 17 to 25

A.L.R. Library

Validity, Construction, and Application of 18 U.S.C.A. s844(h)(1), Proscribing Use of Fire or Explosive to Commit any Felony which May be Prosecuted in Court of United States, 81 A.L.R. Fed. 2d 127

"Multiplicity" is the improper charging of a single offense in more than one count in an indictment. The test for determining whether the same act or transaction constitutes two offenses or only one is whether conviction under each statutory provision requires proof of an additional fact which the other does not.[1] In the case of arson, a single offense may be committed although several houses or articles are burned, provided only one fire is set. Consequently, an indictment for arson which charges the burning of a house as an incident to the burning of its contents, charges but one offense and is not bad for duplicity.[2] Under liberal rules of pleading, an indictment or information may contain separate counts charging arson and also charging the burning of insured property to injure or defraud an insurer.[3]

In a jurisdiction where by statute one who aids, counsels, or procures another to willfully and maliciously set fire to a dwelling house is made a principal and the party's act in so counseling, aiding, or procuring is in itself a substantive offense,[4] an information which charges in a single count that the accused "burned" and "procured to be burned" the building in question does not violate the rule against duplicity.[5]

Footnotes

1 U.S. v. Nguyen, 28 F.3d 477 (5th Cir. 1994).

2 Holton v. State, 573 So. 2d 284 (Fla. 1990).

3 U.S. v. Nguyen, 28 F.3d 477 (5th Cir. 1994).

An indictment charging both the destroying or damaging of a building by fire, and the use of fire to commit a federal felony was not multiplicitous in light of the requirement for proof of an additional fact under each offense not required by the other count; the count for damaging a building by fire required proof of the separate element that the building have some relationship to interstate commerce, and the use of fire to commit a felony offense required proof of the separate element of commission of any felony which could be prosecuted in a federal court. State v. Carrico, 189 W. Va. 40, 427 S.E.2d 474 (1993).

4 U.S. v. Yost, 24 F.3d 99, 40 Fed. R. Evid. Serv. 1083 (10th Cir. 1994).

5 Hicks v. Reese, 624 F. Supp. 1116 (W.D. N.C. 1986).

End of Document

5 Am. Jur. 2d Arson and Related Offenses § 32

American Jurisprudence, Second Edition | May 2021 Update

Arson and Related Offenses

Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.

V. Prosecution and Trial

A. Indictment and Information

2. Particular Allegations

§ 32. Degree of offense

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Arson 12, 17

All the facts and circumstances which constitute the statutory definition of the offense,[1] or which are distinctive of the particular degree for which punishment is to be inflicted,[2] must be alleged in the indictment or information.[3] While the jury should be instructed as to the various degrees of arson if the facts will permit them to find the accused guilty of more than one degree, an instruction on the degree of arson charged in the information and established by the proof is not required if this is not the case.[4]

The rule which permits a conviction for an offense in a degree inferior to that charged in the indictment only applies where the lesser crime is included in the higher crime with which the accused is charged,[5] and the question whether the accused is guilty of the lesser degree of arson need not be submitted to the jury where the accused is charged with the higher degree and the lesser offense is not included therein.[6]

An indictment of a defendant for first degree arson was fatally defective, as it failed to allege essential elements of arson in the first degree, e.g., either that the vehicle was designed for use as a dwelling, or that it was insured against fire damage that was done without the consent of both the insurer and insured, or that it was done with the intent to prejudice the rights of a spouse or co-owner or under circumstances making it reasonably foreseeable that human life might be endangered.[7]

Footnotes

1 State v. Famiglietti, 219 Conn. 605, 595 A.2d 306 (1991).

2 Jackson v. State, 1991 OK CR 103, 818 P.2d 910 (Okla. Crim. App. 1991).

3 Weaver v. State, 497 So. 2d 1089 (Miss. 1986).
4 State v. McDonald, 230 Neb. 85, 430 N.W.2d 282 (1988).
5 State v. Ferguson, 254 Kan. 62, 864 P.2d 693 (1993).
6 Jackson v. State, 1991 OK CR 103, 818 P.2d 910 (Okla. Crim. App. 1991).
7 Shelnutt v. State, 289 Ga. App. 528, 657 S.E.2d 611 (2008).

End of Document

5 Am. Jur. 2d Arson and Related Offenses § 33

American Jurisprudence, Second Edition | May 2021 Update

Arson and Related Offenses

Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.

V. Prosecution and Trial

A. Indictment and Information

2. Particular Allegations

§ 33. Description of property

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Arson 20

An indictment or information charging statutory arson must identify the property burned,[1] and must show that it was the subject of arson as defined by the statute under which the prosecution is instituted.[2]

At common law the form of indictment for arson simply charged the defendant with burning a house, without alleging that it was a dwelling house, for the word "house," in the common-law definition of arson, signified a dwelling house.[3] However, under a statute relating to the burning of a dwelling house or any building occupied in part for dwelling or lodging house purposes, an allegation simply that a "house" was burned with only an allegation of undefined occupancy may be insufficient.[4] A dwelling house is a dwelling house even though partly used for other purposes, and an indictment which alleges in separate counts that the building burned was a dwelling house and that it was a store building, is good.[5]

Where a statute divides arson into degrees and makes it a more serious offense if the property burned is a dwelling house or a building that is a parcel thereof than if the building is not a parcel thereof, the indictment should indicate which degree of the offense is being charged.[6]

Footnotes

1 U.S. v. Day, 943 F.2d 1306 (11th Cir. 1991).

2 U.S. v. Day, 943 F.2d 1306 (11th Cir. 1991).

3 State v. Allen, 322 N.C. 176, 367 S.E.2d 626 (1988).

4 Barnes v. State, 858 P.2d 522 (Wyo. 1993).

5 State v. Mullins, 181 W. Va. 415, 383 S.E.2d 47 (1989).

6 Jackson v. State, 1991 OK CR 103, 818 P.2d 910 (Okla. Crim. App. 1991).

End of Document

5 Am. Jur. 2d Arson and Related Offenses § 34

American Jurisprudence, Second Edition | May 2021 Update

Arson and Related Offenses

Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.

V. Prosecution and Trial

A. Indictment and Information

2. Particular Allegations

§ 34. Ownership and possession

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Arson 22

The identity of the property burned must be fixed with reasonable particularity in order to enable the accused to prepare a defense and plead a conviction or acquittal as a bar to further prosecution of the same offense, and this may be done by describing the property in such words as "belonging to," "the property of," "owned by," "in possession of," or simply "of" a named person.[1]

At common law, and under statutes defining arson as the burning of the house "of another," an allegation of ownership of the house burned is essential, and an indictment must show that the property burned is that of a person other than the defendant.[2] The phrase "of another" refers to possession, not ownership, and the rule at common law and under statutes following the common law is that the house has to be described as the house of the one in possession.[3]

Where the offense charged is the burning of insured property to injure or defraud the insurer, ownership is usually immaterial, and if not material, the indictment or information need not contain an allegation relating to ownership.[4]

Footnotes

1 Bae v. Peters, 950 F.2d 469 (7th Cir. 1991).

2 State v. Allen, 322 N.C. 176, 367 S.E.2d 626 (1988).

3 Payne v. Jones, 638 F. Supp. 669 (E.D. N.Y. 1986), judgment aff'd, 812 F.2d 712 (2d Cir. 1987).

4 Tillman v. Cook, 855 P.2d 211 (Utah 1993).

End of Document

5 Am. Jur. 2d Arson and Related Offenses § 35

American Jurisprudence, Second Edition | May 2021 Update

Arson and Related Offenses

Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.

V. Prosecution and Trial

A. Indictment and Information

2. Particular Allegations

§ 35. Value of property

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Arson 20

Ordinarily the value of the property burned is not an element of the crime of arson, and no allegation of value is necessary.[1] However, if the prosecution is under a statute which applies only where the property burned has a certain value or is over a certain value[2] or which fixes punishment according to the value of the property burned or the amount of damage, value must be alleged in the indictment.[3]

Footnotes

1 § 17.

2 Barnett v. State, 1993 OK CR 26, 853 P.2d 226 (Okla. Crim. App. 1993).

3 Jackson v. State, 1991 OK CR 103, 818 P.2d 910 (Okla. Crim. App. 1991).

5 Am. Jur. 2d Arson and Related Offenses § 36

American Jurisprudence, Second Edition | May 2021 Update

Arson and Related Offenses

Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.

V. Prosecution and Trial

A. Indictment and Information

2. Particular Allegations

§ 36. Time of burning; occupancy

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Arson 21

In the absence of a statute making it a more serious offense should the burning occur in the nighttime, time is immaterial and the indictment or information need not contain an allegation as to time.[1] On the other hand, under a statute which makes the degree of the offense dependent upon the time when the burning took place, or upon whether a human being was staying, lodging, or residing in the building,[2] the indictment must charge the time of the burning, or that there was such a being in the house at the time of the burning, and the words of the statute in this respect must be set out in full.[3]

The gist of the offense under a statute which defines arson as the burning of a building whereby a dwelling or an inhabited building is endangered is not injury to the building set on fire but the danger to the persons occupying the adjoining building,[4] and the pleading should allege that the dwelling or inhabited building was endangered.[5]

Footnotes

1 State v. Rodriquez, 200 Conn. 685, 513 A.2d 71 (1986).

2 State v. Marini, 638 A.2d 507 (R.I. 1994).

3 State v. Famiglietti, 219 Conn. 605, 595 A.2d 306 (1991).

4 U.S. v. Turner, 995 F.2d 1357, 38 Fed. R. Evid. Serv. 1483 (6th Cir. 1993).

5 State v. Cloutier, 646 A.2d 358 (Me. 1994).

End of Document

5 Am. Jur. 2d Arson and Related Offenses § 37

American Jurisprudence, Second Edition | May 2021 Update

Arson and Related Offenses

Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.

V. Prosecution and Trial

A. Indictment and Information

2. Particular Allegations

§ 37. Intent

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Arson 19

Where a particular intent is a material fact in the description of the offense of arson, it must be set forth in the indictment.[1] Thus, if a necessary element of the crime of arson is that the burning be malicious,[2] a failure to allege that the act was done maliciously will render the pleading insufficient.[3] Similarly, where proof of intent to damage an inhabited building is required to establish a particular degree of arson, failure of the indictment to include such language renders it defective.[4]

An arson indictment which alleged that a defendant "unlawfully, willfully and feloniously did set fire to, burn, cause to be burned and aid the burning of an office and utility building" was not rendered fatally defective by the omission of the term "wantonly," as that term was essentially the same as "willfully" and the indictment charged elements with sufficient particularity to apprise the defendant of the specific accusations against the defendant.[5]

Footnotes

1 Archer v. State, 714 S.W.2d 116 (Tex. App. San Antonio 1986).

2 State v. Allen, 322 N.C. 176, 367 S.E.2d 626 (1988).

3 State v. Saults, 294 N.C. 722, 242 S.E.2d 801 (1978).

4 People v. Keech, 121 Misc. 2d 368, 467 N.Y.S.2d 786 (Sup 1983).

5 State v. Hunt, 792 S.E.2d 552 (N.C. Ct. App. 2016).

End of Document

5 Am. Jur. 2d Arson and Related Offenses § 38

American Jurisprudence, Second Edition | May 2021 Update

Arson and Related Offenses

Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.

V. Prosecution and Trial

A. Indictment and Information

2. Particular Allegations

§ 38. Burning

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Arson 23

Where a statute makes a person guilty if that person "burns or causes to be burned" designated property, then an allegation in these words is sufficient,[1] without alleging that the accused "set fire to" the property burned.[2]

In jurisdictions where the terms "burn" and "set fire to" are regarded as synonymous, it is sufficient to allege that the accused "set fire to" the building under a statute making the "burning" of a building an offense.[3]

Footnotes

1 State v. Hinn, 229 Neb. 556, 427 N.W.2d 791 (1988).

2 Aden v. State, 717 P.2d 326 (Wyo. 1986).

3 Aden v. State, 717 P.2d 326 (Wyo. 1986).

End of Document

5 Am. Jur. 2d Arson and Related Offenses § 39

American Jurisprudence, Second Edition | May 2021 Update

Arson and Related Offenses

Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.

V. Prosecution and Trial

A. Indictment and Information

2. Particular Allegations

§ 39. Aiding, counseling, or procuring burning

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Arson 18

Where a person is charged with having aided, counseled, or procured the burning of property, the indictment should include the name of the person who did the actual burning, or allege that the name is not known. It should charge that the person who set the fire did so willfully or maliciously, or if the offense involved is the burning of insured property to injure or defraud the insurer, that the accused did so with the intent to prejudice the insurer, although the action of the one who did the inciting, procuring, and counseling need not be characterized as willful and malicious.[1]

If one person counsels or procures another to do the burning, and the burning is done by a third person, it must appear in the indictment that the third person was induced to burn the building as a result of an act, counsel, or procurement of the accused.[2]

Footnotes

1 State v. Gordon, 539 A.2d 528 (R.I. 1988).

2 Hicks v. Reese, 624 F. Supp. 1116 (W.D. N.C. 1986).

End of Document

5 Am. Jur. 2d Arson and Related Offenses V B Refs.

American Jurisprudence, Second Edition | May 2021 Update

Arson and Related Offenses

Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.

V. Prosecution and Trial

B. Evidence

Topic Summary | Correlation Table

Research References

West's Key Number Digest

West's Key Number Digest, Arson 26, 26.1, 28, 29, 31 to 34, 36, 37, 40

A.L.R. Library

A.L.R. Index, Arson
A.L.R. Index, Criminal Law
A.L.R. Index, Evidence
A.L.R. Index, Indictments and Informations
West's A.L.R. Digest, Arson 26, 26.1, 28, 29, 31 to 34, 36, 37, 40

End of Document

5 Am. Jur. 2d Arson and Related Offenses § 40

American Jurisprudence, Second Edition | May 2021 Update

Arson and Related Offenses

Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.

V. Prosecution and Trial

B. Evidence

1. In General; Types of Evidence

§ 40. Proof required, generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Arson 26, 26.1

There can be no arson conviction without satisfactory proof,[1] by either direct or circumstantial evidence, not only of the burning of the building or property in question,[2] but also that someone is criminally responsible for the burning,[3] that is, that the act was done with the requisite mental state,[4] and did not result from natural or accidental causes.[5]

If a plea of not guilty is entered, the prosecution must prove both the corpus delicti and the connection of the accused with the crime charged.[6]

Proof of the burning alone is not sufficient to establish the corpus delicti,[7] for if nothing more appears the presumption is that the fire was the result of accident or some providential cause rather than of criminal design.[8]

If the offense or the degree of the offense depends upon the type of building burned, the state must prove that the building falls within the statutory definition, for proof of this element is just as essential to a conviction as proof that there was a willful and malicious burning.[9]

To warrant a conviction for arson[10] or for the burning of insured property to injure or defraud an insurer,[11] the prosecution must prove all the elements of the crime beyond a reasonable doubt.[12]

Footnotes

1 State v. Christiansen, 144 Idaho 463, 163 P.3d 1175 (2007).

2 State v. Pigott, 331 N.C. 199, 415 S.E.2d 555 (1992).

3 U.S. v. Triplett, 922 F.2d 1174, 32 Fed. R. Evid. Serv. 152 (5th Cir. 1991).

4 § 48.

5 § 47.

6 Ex parte Davis, 548 So. 2d 1041 (Ala. 1989).

7 State v. McDonald, 230 Neb. 85, 430 N.W.2d 282 (1988).

8 Ross v. State, 300 Ark. 369, 779 S.W.2d 161 (1989).

9 U.S. v. Day, 943 F.2d 1306 (11th Cir. 1991).

10 State v. Marini, 638 A.2d 507 (R.I. 1994).

11 Wells v. State, 521 So. 2d 1274 (Miss. 1987).

12 Riner v. Com., 268 Va. 296, 601 S.E.2d 555 (2004).

End of Document

5 Am. Jur. 2d Arson and Related Offenses § 41

American Jurisprudence, Second Edition | May 2021 Update

Arson and Related Offenses

Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.

V. Prosecution and Trial

B. Evidence

1. In General; Types of Evidence

§ 41. Type of evidence; direct or circumstantial

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Arson 28

After it has been proved that the property was burned, any legal and sufficient evidence may be introduced to prove that the act was committed by the accused and that it was done with criminal intent.[1] For the purpose of establishing the offense of arson, whether the origin of a fire was accidental or incendiary is a question of fact, and resolution of that question may, and often must, turn upon the weight of circumstantial evidence.[2] Evidence was sufficient to support a defendant's conviction for arson where, security footage of the defendant's diner showed the defendant approaching the front door, disappearing from view, reappearing approximately five minutes later, then returning to the diner after doing something at the defendant's truck and again reappearing approximately one minute later, permitting the inference that the defendant entered the diner shortly before the smoke began emanating from the diner, and investigators testified that the fire was incendiary based on the timing of the appearance and color of the smoke observable in the footage.[3] Similarly, evidence was sufficient to sustain a conviction for first degree arson, although no witness observed the defendant set fire to the occupied trailer; witnesses testified that the defendant poured gasoline on an ex-girlfriend and around the trailer and the trailer burst into flames, and pastors who saw the burning trailer and stopped to help saw a man standing near the trailer watching it burn from which a reasonable juror could infer that the defendant intentionally started the fire.[4]

The corpus delicti may be proved by direct testimony of persons who witnessed the commission of the crime, or by the testimony of an accomplice[5] or by the extrajudicial confession or admission of the defendant.[6] However, arson is usually committed alone and in secret, and seldom can it be established by direct and positive testimony,[7] and the absence of direct evidence is no bar to a conviction.[8] All elements of arson may be proven by circumstantial evidence; in fact, arson must ordinarily be proven by circumstantial evidence.[9] The corpus delicti may always be proved by circumstantial evidence.[10] Thus, the fact of the incendiary origin of the fire,[11] and that the accused had the opportunity[12] and motive for committing the crime may be

proved by circumstantial evidence.[13] Even though the primary fact, namely, the burning of the building,[14] is usually established by direct evidence, it may be proved by circumstantial evidence.[15]

Evidence in a prosecution for arson which is purely circumstantial may be sufficient to justify the trial court in denying a motion by the defendant for a verdict or judgment of acquittal,[16] and such evidence may be sufficient to sustain a conviction for arson,[17] or for burning insured property to injure or defraud the insurer.[18] When the government offers evidence of the defendant's motives to set the fire, the defendant's plan and preparation to do so, the defendant's opportunity to carry out the plan and evidence that the fire did not occur accidentally, direct evidence of arson is not necessary to sustain a conviction under federal arson statute.[19] For instance, there was sufficient evidence to prove arson beyond a reasonable doubt, as required to support an aggravated arson conviction, even though the fire investigator could not determine the cause of the fire in the defendant's home as being accidental or incendiary, where three witnesses testified that, prior to the fire, the defendant talked about a plot of arson for insurance money on multiple occasions.[20] While in previous cases the evidence had to be sufficient to exclude every other hypothesis except that of the defendant's guilt, a newer line of cases disagrees.[21] However, circumstantial evidence which heaps inference upon inference is not sufficient.[22]

CUMULATIVE SUPPLEMENT

Cases:

Circumstantial evidence introduced by State in arson trial raised fact issue for jury as to defendant's guilt; although defendant had called 911 and alleged that three men in her garage were threatening her and seeking entry into her gun safe, nothing was stolen from defendant's home, damage to defendant's gun safe was superficial, accelerant detection canine alerted to a pair of defendant's slippers in her bedroom, which were not the shoes defendant wore during the fire, and they tested positive for ignitable liquids, and the shirt and jeans defendant wore during fire also tested positive for ignitable liquids. S.C. Code Ann. §§ 16-11-110(C), 16-11-125, 16-11-130, 16-17-722(A). State v. Rose, 423 S.C. 382, 814 S.E.2d 529 (Ct. App. 2018).

[END OF SUPPLEMENT]

Footnotes

1 People v. Casey, 37 A.D.3d 1113, 829 N.Y.S.2d 309 (4th Dep't 2007).

2 Riner v. Com., 268 Va. 296, 601 S.E.2d 555 (2004).

3 State v. Maine, 2017 ME 25, 155 A.3d 871 (Me. 2017), as corrected, (July 27, 2017).

4 Dickerson v. State, 175 So. 3d 8 (Miss. 2015).

5 Yarborough v. State, 261 Ga. 169, 402 S.E.2d 716 (1991).

6 State v. Marini, 638 A.2d 507 (R.I. 1994).

7 Payne v. Jones, 638 F. Supp. 669 (E.D. N.Y. 1986), judgment aff'd, 812 F.2d 712 (2d Cir. 1987).
Proof of arson, out of necessity, must often rely on circumstantial evidence. State v. Rodano, 2017-Ohio-1034, 86 N.E.3d 1032 (Ohio Ct. App. 8th Dist. Cuyahoga County 2017).

8 State v. Adkins, 191 W. Va. 480, 446 S.E.2d 702 (1994).

9 State v. Steidley, 533 S.W.3d 762 (Mo. Ct. App. W.D. 2017), reh'g and/or transfer denied, (Oct. 31, 2017) and transfer denied, (Dec. 19, 2017).

10 Leach v. State, 836 P.2d 336 (Wyo. 1992).

11 Riner v. Com., 268 Va. 296, 601 S.E.2d 555 (2004).

12 U.S. v. Fakhoury, 819 F.2d 1415, 23 Fed. R. Evid. Serv. 42 (7th Cir. 1987).

13 State v. Webber, 613 A.2d 375 (Me. 1992).
14 U.S. v. Pazos, 24 F.3d 660 (5th Cir. 1994).
15 U.S. v. Grimes, 967 F.2d 1468 (10th Cir. 1992).
16 U.S. v. Henson, 939 F.2d 584 (8th Cir. 1991).
17 Leach v. State, 836 P.2d 336 (Wyo. 1992).
18 State v. McDonald, 230 Neb. 85, 430 N.W.2d 282 (1988).
19 U.S. v. Martin, 523 F.3d 281 (4th Cir. 2008).
20 State v. Rodano, 2017-Ohio-1034, 86 N.E.3d 1032 (Ohio Ct. App. 8th Dist. Cuyahoga County 2017).
21 U.S. v. Henson, 939 F.2d 584 (8th Cir. 1991).
22 State v. Grant, 67 Ohio St. 3d 465, 1993-Ohio-171, 620 N.E.2d 50 (1993).

End of Document

5 Am. Jur. 2d Arson and Related Offenses § 42

American Jurisprudence, Second Edition | May 2021 Update

Arson and Related Offenses

Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.

V. Prosecution and Trial

B. Evidence

1. In General; Types of Evidence

§ 42. Opinion evidence

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Arson 28, 37, 40

A.L.R. Library

Admissibility of Expert and Opinion Evidence as to Cause or Origin of Fire in Criminal Prosecution for Arson or Related Offense—Modern Cases, 85 A.L.R.5th 187

Opinion evidence relating to fire is ordinarily inadmissible.[1] The test of admissibility of the opinion of a lay witness is whether the subject of the opinion may be so described as to afford the trier of fact the same opportunity to construe the evidence as the witness. If it can be so described, the opinion of the witness is inadmissible;[2] if it cannot, the opinion may be admitted.[3]

The admissibility of expert opinion rests upon the ground that the known or provable facts may have a meaning which cannot be read except by persons specially qualified by skill, experience, or training and study to interpret them.[4] An expert should not be permitted to give an opinion as to whether the fire was of incendiary origin,[5] if the physical facts are so simple that they can be readily understood by the jury when properly described by the witness; it is for the jury to draw the appropriate conclusions.[6] However, a qualified expert[7] may give an opinion as to the origin of the fire where there are involved explanations and inferences not within the range of ordinary training, knowledge, intelligence, and experience,[8] or when the expert's opinion, together with the expert's reasons therefor, will afford the jury assistance, in addition to an explanation of the facts, in determining that issue.[9]

An expert may also give an opinion as to other matters relating to the burning,[10] such as how long the fire had been burning.[11] In any case, error in the admission of expert testimony is not grounds for reversal where that testimony is merely cumulative and where there is an abundance of other competent evidence to sustain the opinion of the witness.[12] Thus, objected-to testimony of an arson investigator regarding the causes of fires in the murder victim's house was not so material that its admission, even if erroneous, resulted in the violation of the defendant's due process right to a fundamentally fair trial, given the overwhelming evidence that the fires were not mere happenstance which led to the inescapable conclusion that the fires were deliberately set in furtherance of the defendant's ultimate intention to set the entire house ablaze.[13]

CUMULATIVE SUPPLEMENT

Cases:

Detective was qualified to testify as an expert arson investigator in arson prosecution brought against defendant following an incident in which defendant set fire to a home occupied by a former girlfriend; detective's testimony was based upon his knowledge and experience in fire investigations and examination of scene of fire, detective testified that he went through the fire academy and a fire department apprenticeship, and although detective did not have specialized training or education in arson investigation, he testified that he had 17 and one-half years of experience with fire department and had been in fire investigation unit for more than ten years, and had probably investigated in the area of 1,000 fires. Ohio Rev. Code Ann. §§ 2903.02(B), 2923.02; Ohio Evid. R. 702(B). State v. Johnson, 2018-Ohio-3670, 119 N.E.3d 914 (Ohio Ct. App. 8th Dist. Cuyahoga County 2018).

[END OF SUPPLEMENT]

Footnotes

1 U.S. v. Lundy, 809 F.2d 392, 22 Fed. R. Evid. Serv. 519 (7th Cir. 1987).

2 People v. Bajraktari, 154 A.D.2d 542, 546 N.Y.S.2d 384 (2d Dep't 1989).

3 State v. Span, 819 P.2d 329 (Utah 1991).
A witness accepted as an expert in the field of incendiary fires was qualified to render an opinion that a fire was intentionally set. Furthermore, it was found that the jury was not as able as the witness to form the opinion that the fire was purposely set, and the opinion of the witness was helpful to the jury in reaching its decision. State v. Hales, 344 N.C. 419, 474 S.E.2d 328 (1996).

4 U.S. v. Kladouris, 964 F.2d 658, 35 Fed. R. Evid. Serv. 1016 (7th Cir. 1992).
Four independent experts opined that based on the particular burn patterns, the fire was intentionally set. U.S. v. Morrison, 218 Fed. Appx. 933 (11th Cir. 2007).
Arson experts testified that the fire was not one of normal progression and that a fire in the attic could only have occurred by an unnatural hole in the ceiling above the kitchen where the fire was initiated. State v. Sosa, 921 So. 2d 94 (La. 2006).

5 U.S. v. Henson, 939 F.2d 584 (8th Cir. 1991).

6 People v. Bajraktari, 154 A.D.2d 542, 546 N.Y.S.2d 384 (2d Dep't 1989).

7 Jackson v. State, 1991 OK CR 103, 818 P.2d 910 (Okla. Crim. App. 1991).
With a proper foundation laid as to expertise, a fire marshal may offer an expert opinion as to whether a fire was intentionally set. State v. Jefferies, 243 N.C. App. 455, 776 S.E.2d 872 (2015).

8 State v. Span, 819 P.2d 329 (Utah 1991).
The evidence was factually sufficient, where the arson investigator opined that the fire at a house under construction was intentionally set and that the cause of the fire was arson, and chemists testified that a can found at the scene contained diesel fuel, which was commonly used by arsonists because it does not emit

fumes that can cause flash burns on the person who sets the fire. McLendon v. State, 167 S.W.3d 503 (Tex. App. Houston 14th Dist. 2005), petition for discretionary review refused, (Jan. 31, 2007).

9 State v. Span, 819 P.2d 329 (Utah 1991).
As to the incendiary origin of a fire, generally, see § 47.

10 State v. Eason, 328 N.C. 409, 402 S.E.2d 809 (1991).

11 U.S. v. Fiore, 821 F.2d 127 (2d Cir. 1987).

12 Clark v. State, 562 N.E.2d 11 (Ind. 1990).

13 Narrod v. Napoli, 763 F. Supp. 2d 359 (W.D. N.Y. 2011).

End of Document

5 Am. Jur. 2d Arson and Related Offenses § 43

American Jurisprudence, Second Edition | May 2021 Update

Arson and Related Offenses

Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.

V. Prosecution and Trial

B. Evidence

1. In General; Types of Evidence

§ 43. Experimental evidence relating to fire

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Arson 28, 37

The prosecution may be permitted to introduce evidence of an experiment to sustain its theory as to how the fire may have started if there is proof to show that such instrument as is to be experimented with was used; but such evidence is not admissible if this evidence is lacking.[1] Where the theory of the prosecution is that a delayed fire was produced by the use of a candle, and there is evidence that candles were on the premises at the time of the fire, the court, in its discretion, may permit experimental evidence of the burning time of candles of the kind found.[2]

Footnotes

1 State v. Gray, 221 Conn. 713, 607 A.2d 391 (1992).

2 State v. Dionne, 505 A.2d 1321 (Me. 1986).

5 Am. Jur. 2d Arson and Related Offenses § 44

American Jurisprudence, Second Edition | May 2021 Update

Arson and Related Offenses

Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.

V. Prosecution and Trial

B. Evidence

1. In General; Types of Evidence

§ 44. Extrajudicial confession or admission as linking defendant to crime

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Arson 34

The general rule is that a naked extrajudicial confession of guilt by one accused of a crime, uncorroborated by any other evidence, is not sufficient to warrant or sustain a conviction.[1] Where there is sufficient corroborative evidence the confession or admission is admissible,[2] but where there is no evidence aside from the admission or confession tending to show that there was a burning and that the fire was of incendiary origin, the extrajudicial confession or admission is not admissible in evidence.[3]

Statements as to the amount of corroborative evidence required vary. There is authority that no other evidence at all tending to show that the burning was by design is required,[4] or that a confession must be corroborated by more than slight circumstances,[5] or that there must be sufficient other independent, material, and substantial evidence.[6] To warrant the admission of the confession and to corroborate it, the evidence as to the incendiary origin of the fire need not be as convincing as the evidence necessary to establish the corpus delicti in the absence of any confession.[7]

Evidence of an arson defendant's postarrest statements was admissible in rebuttal of defendant's prior witnesses, who had claimed that a different individual had set one of the charged fires; the postarrest statements tended to show that the defendant had set fire in question.[8]

Footnotes

1 Thomas v. State, 295 Ark. 29, 746 S.W.2d 49 (1988).

2 Leach v. State, 836 P.2d 336 (Wyo. 1992).
3 Thomas v. State, 295 Ark. 29, 746 S.W.2d 49 (1988).
4 U.S. v. Turner, 995 F.2d 1357, 38 Fed. R. Evid. Serv. 1483 (6th Cir. 1993).
5 State v. Marini, 638 A.2d 507 (R.I. 1994).
6 People v. Thomas, 137 Ill. 2d 500, 148 Ill. Dec. 751, 561 N.E.2d 57 (1990).
7 State v. Adkins, 191 W. Va. 480, 446 S.E.2d 702 (1994).
8 U.S. v. Mock, 523 F.3d 1299 (11th Cir. 2008).

End of Document

5 Am. Jur. 2d Arson and Related Offenses § 45

American Jurisprudence, Second Edition | May 2021 Update

Arson and Related Offenses

Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.

V. Prosecution and Trial

B. Evidence

1. In General; Types of Evidence

§ 45. Spouse as witness

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Arson 28

A.L.R. Library

Crimes against spouse within exception permitting testimony by one spouse against other in criminal prosecution—modern state cases, 74 A.L.R.4th 223

Under a statute providing that one spouse cannot be compelled or allowed to testify against the other in a criminal case without the consent of the accused spouse, except in the case of a prosecution for an offense committed by one against the other, the defendant's spouse cannot be compelled to testify against the other spouse where the spouse had been indicted and tried solely for arson of that spouse's house and was neither charged with, nor tried for any offense against the estranged spouse, even though the spouse's property was destroyed along with the defendant's house.[1] Where a statute permits one spouse to testify for or against the other when the one charged is accused of an offense against the person or property of the other, a wife may be permitted to testify against the husband where the wife is an owner of the property burned.[2]

Footnotes

1 Creech v. Com., 242 Va. 385, 410 S.E.2d 650 (1991).

2 State v. Harnois, 638 A.2d 532 (R.I. 1994).

End of Document

5 Am. Jur. 2d Arson and Related Offenses § 46

American Jurisprudence, Second Edition | May 2021 Update

Arson and Related Offenses

Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.

V. Prosecution and Trial

B. Evidence

1. In General; Types of Evidence

§ 46. Evidence of other fires or crimes

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Arson 32

Trial Strategy

Investigating Particular Crimes, 2 Am. Jur. Trials 171 §§ 2 to 8 (Arson)

The general rule that evidence of separate and independent crimes is inadmissible to prove the guilt of a person on trial for a criminal offense[1] operates in a prosecution for arson to exclude evidence of crimes distinct from that charged, whether such crimes are of a similar character or not. However, to this general rule there are several exceptions which are as uniformly accepted by the courts as the rule itself. One exception is that, where evidence tends to aid in identifying the accused as the person who committed the particular crime under investigation, it is admissible, in spite of the fact that it tends to show the guilt of the accused of other crimes for which the accused is not on trial, and in a prosecution for arson, evidence of other fires set by the accused,[2] or of the commission of other crimes,[3] is admissible to identify the accused as the person who set the fire under investigation.[4]

Evidence of other offenses is also admissible to show the criminality of the act in question,[5] to show motive or intent,[6] and to show that the arson for which the accused is being tried was a part of a common scheme or plan,[7] such as a general scheme of burnings to collect insurance.[8] For instance, evidence regarding the defendant's perpetration of a prior arson was probative of the defendant's intent, and was thus admissible under the rule permitting admission of evidence of defendant's other crimes,

wrongs, or acts, in a trial for attempted first degree arson and being intoxicated and disruptive in public, where both cases contained key similarities, including that the arsons occurred in the same city, that arsons occurred during nighttime hours, that arsons were set on the exterior of buildings at regular entranceways, that the defendant was intoxicated, that the defendant knew the buildings to be occupied, and that the defendant was angry about perceived harms perpetrated against the defendant by occupants of the buildings.[9] However, an arson defendant's proffered evidence of two other fires was excludible on relevance grounds, given that neither fire was set in the stairwell of an occupied apartment building, which was the common feature of the fires for which the defendant had been indicted.[10]

Footnotes

1 Chastain v. State, 260 Ga. 789, 400 S.E.2d 329 (1991).

2 U.S. v. Anderson, 933 F.2d 1261, 33 Fed. R. Evid. Serv. 170 (5th Cir. 1991).

3 State v. Webber, 613 A.2d 375 (Me. 1992).

4 State v. Grant, 67 Ohio St. 3d 465, 1993-Ohio-171, 620 N.E.2d 50 (1993).

5 State v. Grant, 67 Ohio St. 3d 465, 1993-Ohio-171, 620 N.E.2d 50 (1993).

6 State v. Ramsundar, 204 Conn. 4, 526 A.2d 1311 (1987).

7 U.S. v. Veltmann, 6 F.3d 1483, 38 Fed. R. Evid. Serv. 377 (11th Cir. 1993).

8 U.S. v. Veltmann, 6 F.3d 1483, 38 Fed. R. Evid. Serv. 377 (11th Cir. 1993).

9 State v. Wilson-Angeles, 795 S.E.2d 657 (N.C. Ct. App. 2017).

10 U.S. v. Mock, 523 F.3d 1299 (11th Cir. 2008).

5 Am. Jur. 2d Arson and Related Offenses § 47

American Jurisprudence, Second Edition | May 2021 Update

Arson and Related Offenses

Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.

V. Prosecution and Trial

B. Evidence

2. Particular Matters to Be Proved

§ 47. Incendiary origin of fire

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Arson 26

Trial Strategy

Investigating Particular Crimes, 2 Am. Jur. Trials 171 § 4 (Flammable liquids and devices)

The corpus delicti of arson consists of proof that (1) a building was burned, and (2) the building was willfully burned by some responsible person; the burning by accidental and natural causes must be satisfactorily excluded.[1] There is a presumption that the fire was the result of accident or some providential cause rather than the result of a criminal design,[2] and evidence must be presented to rebut that presumption.[3] In a prosecution for arson, the state bears the burden of overcoming the presumption that any fire is a result of accident and providential cause rather than criminal design by proving, from either direct or circumstantial evidence, beyond a reasonable doubt, that the fire was of incendiary origin and that the defendant was the guilty party.[4] Incendiarism may be proved by positive evidence, such as testimony as to the manner in which the fire burned,[5] or the presence of an odor of a flammable liquid, or that combustible materials or flammable liquids or their containers were found on the premises,[6] or the presence of fingerprints or palm prints.[7] However, evidence of an incendiary origin required for a conviction of second degree arson does not require that there be proof of some highly combustible material.[8]

The incendiary nature of the fire may also be shown by evidence aimed at demonstrating the improbability that the fire resulted from accidental or natural causes.[9]

The accused may introduce any evidence, otherwise competent, to disprove the contention of the prosecution that the burning was of an incendiary nature, and to show that it was of accidental or providential origin.[10]

Footnotes

1 Sheffield v. State, 87 So. 3d 607 (Ala. Crim. App. 2010).

2 Thomas v. State, 295 Ark. 29, 746 S.W.2d 49 (1988).

3 State v. Gray, 221 Conn. 713, 607 A.2d 391 (1992).

4 Woodward v. State, 342 Ga. App. 499, 804 S.E.2d 153 (2017).

5 State v. Nickles, 728 P.2d 123 (Utah 1986).

6 State v. Grant, 67 Ohio St. 3d 465, 1993-Ohio-171, 620 N.E.2d 50 (1993).

7 U.S. v. Polin, 824 F. Supp. 542 (E.D. Pa. 1993).

8 State v. Steidley, 533 S.W.3d 762 (Mo. Ct. App. W.D. 2017), reh'g and/or transfer denied, (Oct. 31, 2017) and transfer denied, (Dec. 19, 2017).

9 State v. Atlas, 224 Mont. 92, 728 P.2d 421 (1986).

10 Com. v. Ward, 529 Pa. 506, 605 A.2d 796 (1992).

5 Am. Jur. 2d Arson and Related Offenses § 48

American Jurisprudence, Second Edition | May 2021 Update

Arson and Related Offenses

Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.

V. Prosecution and Trial

B. Evidence

2. Particular Matters to Be Proved

§ 48. Requisite mental state

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Arson 29, 31, 37(2)

Because the law presumes all burning to be accidental, in order to prove the corpus delicti of arson, the state must overcome that presumption by proving the burning was by "criminal design."[1] The clandestine nature of arson ordinarily necessitates that malice be proved by circumstantial evidence, and such proof is not limited to evidence of ill will, but rather may take many forms.[2] In an arson prosecution, the lack of evidence of accidental causes may contribute to a reasonable inference that the fire was started intentionally, particularly when supported by the cumulative force of other circumstantial evidence bearing on intent.[3] For instance, the state adduced ample circumstantial evidence from which a jury reasonably could have inferred that the defendant possessed the requisite intent to damage the building at the time that the defendant started the fire so as to support the defendant's conviction for arson; even if suicide was the defendant's primary goal, the jury reasonably could have inferred that the defendant intended to damage the building as a means to that goal, particularly in light of evidence that the fire started on the floor of the defendant's front room and that the defendant did not seek emergency assistance to extinguish it.[4] Similarly, evidence was sufficient to support the defendant's conviction for arson in the first degree, even though the defendant's intent in setting the fire was to commit suicide, not to burn or damage the house or cause loss to the insurer; evidence showed that the defendant poured gasoline and lighter fluid throughout house and garage, and not just on the defendant's person, evidence showed that the defendant ripped up books and papers and spread them throughout the upper levels of the house, the defendant told investigators that the defendant intended for the house to burn, as well as the vehicle the defendant was inside, and although the fire investigator testified that the fire did not spread beyond the garage because the sprinkler system worked, that area suffered direct fire damage and the smoke and heat damaged the entire house, causing over $60,000 in damage.[5]

While the intent cannot be inferred from the mere act of burning, it may be found from all the facts in the case.[6] To prove intent, the prosecution may show that the defendant removed most of the contents of the building shortly before the fire,[7] or

that the defendant removed items of sentimental value and gave them to a son on the day before the fire.[8] Evidence of threats to destroy the property later burned,[9] and of ill will, unfriendly relations, and trouble between the defendant and the owner of the property burned[10] is also admissible, and may be considered with other suspicious circumstances and conduct.[11] For instance, malice may be shown by evidence indicating that the accused increased fire insurance coverage or attributed excessive value to damaged personalty.[12]

Observation:

Whether a defendant intentionally set the third and fourth of a series of fires that occurred at the defendant's residence over an eight-week period was a question for the jury in a prosecution on four counts of first degree arson; the state investigators testified that they could rule out causes not involving human action but could not completely rule out accidental causation, and evidence of the first two fires provided circumstantial proof of intent, under the psychological doctrine of chances, because one could reasonably expect the defendant to be particularly vigilant against creating additional fires.[13]

Footnotes

1 Brown v. State, 39 Md. App. 497, 388 A.2d 130 (1978).
2 Brown v. State, 39 Md. App. 497, 388 A.2d 130 (1978).
3 State v. Ramey, 127 Conn. App. 560, 14 A.3d 474 (2011).
4 State v. Ramey, 127 Conn. App. 560, 14 A.3d 474 (2011).
5 Barber v. State, 318 Ga. App. 240, 733 S.E.2d 525 (2012).
6 People v. Keech, 121 Misc. 2d 368, 467 N.Y.S.2d 786 (Sup 1983).
7 U.S. v. Kamel, 965 F.2d 484 (7th Cir. 1992).
8 Dees v. State, 126 So. 3d 21 (Miss. 2013).
9 State v. Webber, 613 A.2d 375 (Me. 1992).
10 U.S. v. Henson, 939 F.2d 584 (8th Cir. 1991).
11 Ex parte Davis, 548 So. 2d 1041 (Ala. 1989).
12 Nasim v. State, 34 Md. App. 65, 366 A.2d 70 (1976).
13 State v. Vuley, 193 Vt. 622, 2013 VT 9, 70 A.3d 940 (2013).

End of Document

5 Am. Jur. 2d Arson and Related Offenses § 49

American Jurisprudence, Second Edition | May 2021 Update

Arson and Related Offenses

Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.

V. Prosecution and Trial

B. Evidence

2. Particular Matters to Be Proved

§ 49. Requisite mental state—Intent to injure or defraud insurer

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Arson 29, 31, 37(2)

Intent to injure or defraud an insurer may be shown by proof that the burned building was the property of the accused, that the accused burned it and that at such time the accused was insured against loss by fire.[1] The prosecution need not show that the accused collected anything on the insurance policy, or that the accused made any demand for payment.[2] Evidence was sufficient to support defendant's conviction for arson of the defendant's residence; an arson investigator concluded that the fire was intentionally set, the insurance adjuster noticed the presence of indicators of possible insurance fraud, including the unexplained absence of the defendant, the defendant's children, and the family's cats at the time of the fire, and a search of the residence belonging to the defendant's companion on the night of the fire recovered clothing, jewelry, furniture, and documents belonging to the defendant.[3]

On a prosecution for burning insured property to injure or defraud the insurer, the prosecution may show that the accused had a motive or desire to have the property destroyed by fire by showing overinsurance,[4] that the accused was experiencing financial trouble at the time, and nine days before the fire the defendant doubled the insurance limits,[5] or that the accused was in financial straits, or in need of money.[6] On the other hand, the absence of proof that the property was overinsured or that the accused profited, does not prevent a conviction.[7]

Where the prosecution has put in evidence a proof of loss sworn to by the accused, the accused should be allowed to show that the fire destroyed certain other property not included in the proof of loss; such evidence has a bearing on the accused's motive.[8]

In an arson prosecution involving an attempt to defraud the insurer of the subject premises, the statement of a claims manager of the insurer, that payment under the defendant's insurance policy had been denied because of the insurer's belief that a provable arson defense existed, is admissible to demonstrate the defendant's intent to deceive the insurance company.[9]

Footnotes

1 Kinser v. State, 501 N.E.2d 1041 (Ind. 1986).
2 State v. Riddick, 315 N.C. 749, 340 S.E.2d 55 (1986).
3 Graf v. State, 327 Ga. App. 598, 760 S.E.2d 613 (2014).
4 U.S. v. Kamel, 965 F.2d 484 (7th Cir. 1992).
5 People v. Stevens, 84 A.D.3d 1424, 922 N.Y.S.2d 596 (3d Dep't 2011).
6 U.S. v. Nguyen, 28 F.3d 477 (5th Cir. 1994).
7 U.S. v. Polin, 824 F. Supp. 542 (E.D. Pa. 1993).
8 Com. v. Ward, 529 Pa. 506, 605 A.2d 796 (1992).
9 People v. Peltz, 701 P.2d 98 (Colo. App. 1984).

End of Document

5 Am. Jur. 2d Arson and Related Offenses § 50

American Jurisprudence, Second Edition | May 2021 Update

Arson and Related Offenses

Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.

V. Prosecution and Trial

B. Evidence

2. Particular Matters to Be Proved

§ 50. Motive, generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Arson 31

Trial Strategy

Investigating Particular Crimes, 2 Am. Jur. Trials 171 § 6 (Developing leads—Motives)

The existence of motive, if there is one, is a factor for the consideration of the trier of facts,[1] and evidence of motive is admissible,[2] and may be received and considered along with and as corroborative of other evidence tending to show a plan or scheme to burn.[3] While opportunity alone is insufficient to support an arson conviction, evidence of opportunity and motive aids in determining guilt of a defendant.[4] However, proof of motive alone does not establish guilt.[5]

The absence of proof of motive can, but need not necessarily, be taken into consideration.[6] The absence of evidence of motive is not sufficient to set aside a conviction otherwise sustained by positive evidence of guilt.[7]

Evidence that the burned property was covered by insurance may be relevant and admissible in a prosecution for arson to show motive and intent where the accused benefits from the insurance.[8] For instance, evidence of the defendant's drug habit was admissible to prove the defendant's motive for allegedly burning down the defendant's own insured home, such that the trial court did not abuse its discretion when it joined drug possession charges to the arson charge for purposes of trial; evidence showed the defendant possessed drugs at a time the defendant was arrested at a temporary residence, evidence authorized the

conclusion that the defendant was a drug addict in need of money when the defendant allegedly burned down the house for the purpose of collecting the proceeds of a homeowner's insurance policy, and the evidence and law of drug possession was not so complex or confusing as to require severance.[9] Where the theory of the prosecution is that capitalizing on insurance coverage was a motive for the crime, evidence concerning the filing of proofs of loss is material, particularly when it tends to show overinsurance, or that the defendant's claim of loss is grossly exaggerated.[10]

Footnotes

1 State v. Caruolo, 524 A.2d 575 (R.I. 1987).

2 State v. Jacobs, 226 Neb. 184, 410 N.W.2d 468 (1987).

3 U.S. v. Shively, 927 F.2d 804 (5th Cir. 1991).
As to motive as an element of the offense of arson, see § 8.

4 State v. Steidley, 533 S.W.3d 762 (Mo. Ct. App. W.D. 2017), reh'g and/or transfer denied, (Oct. 31, 2017) and transfer denied, (Dec. 19, 2017).

5 State v. McDonald, 230 Neb. 85, 430 N.W.2d 282 (1988).

6 State v. Caruolo, 524 A.2d 575 (R.I. 1987).

7 State v. Gray, 221 Conn. 713, 607 A.2d 391 (1992).

8 U.S. v. Kladouris, 964 F.2d 658, 35 Fed. R. Evid. Serv. 1016 (7th Cir. 1992).

9 Graf v. State, 327 Ga. App. 598, 760 S.E.2d 613 (2014).

10 State v. Carrico, 189 W. Va. 40, 427 S.E.2d 474 (1993).

5 Am. Jur. 2d Arson and Related Offenses § 51

American Jurisprudence, Second Edition | May 2021 Update

Arson and Related Offenses

Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.

V. Prosecution and Trial

B. Evidence

2. Particular Matters to Be Proved

§ 51. Identity of defendant, generally

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Arson 33, 36

In addition to proof of the corpus delicti, the prosecution must show the criminal connection of the accused with the burning,[1] and where the identity of the accused is in issue, proof of every fact and circumstance which tends to establish the identity of the person who set the fire is admissible.[2] Evidence that the defendant was seen on the premises or in the vicinity of the fire whether before or after it occurred,[3] or of palm prints[4] and fingerprints which correspond with the defendant's, although not by itself sufficient to establish guilt, may be considered with other suspicious circumstances.[5] While a conviction may be had, even though there is no evidence that the accused was in a position where the accused could have ignited the fire, there must be something connecting the accused in a personal way with the actual burning.[6] Thus, evidence was insufficient to support convictions for arson of a dwelling and burning to defraud an insurer where there was no evidence, direct or circumstantial, that the defendant was the arsonist, assuming the origin of the fire was arson, in that no one took samples from the defendant's clothes or person on the day of the fire to determine whether the defendant had been in contact with gasoline or some other accelerant, no proof was offered that the house was locked, which might have prevented someone other than the defendant from entering the residence and a local fire investigator testified that when the investigator suspected arson, the investigator checked to see if valuables or other expensive items had been removed from the burned building, and the investigator conceded that all these items were present in the defendant's home and that it looked "lived in."[7] However, evidence was sufficient to establish that the defendant started a fire in a sporting goods store that the defendant owned, as required to convict the defendant of second degree arson, despite the defendant's contention that the opportunity to set the fire was insufficient; the defendant provided inconsistent statements regarding the defendant's whereabouts at the time of the fire, the defendant had motive due to declining sales prior to the store's closing, one witness, who was a friend of the defendant, testified that the friend talked to the defendant on the phone on the day of the fire and the defendant stated that the defendant was in the store and asked how much gas it took

to blow up a building, and another witness, who helped the defendant with maintenance in the building prior to the fire, testified that the defendant directed the witness to turn off all of the electrical breakers, which disabled the surveillance cameras.[8]

It is competent for the accused to show that another committed the crime with which the accused is charged.[9]

Footnotes

1 State v. McDonald, 230 Neb. 85, 430 N.W.2d 282 (1988).

2 Com. v. Ward, 529 Pa. 506, 605 A.2d 796 (1992).

3 U.S. v. Kamel, 965 F.2d 484 (7th Cir. 1992).

4 State v. Showaker, 721 P.2d 892 (Utah 1986).

5 U.S. v. Polin, 824 F. Supp. 542 (E.D. Pa. 1993).

6 State v. Adkins, 191 W. Va. 480, 446 S.E.2d 702 (1994).

7 Perez v. State, 120 So. 3d 168 (Fla. 2d DCA 2013).

8 State v. Steidley, 533 S.W.3d 762 (Mo. Ct. App. W.D. 2017), reh'g and/or transfer denied, (Oct. 31, 2017) and transfer denied, (Dec. 19, 2017).

9 U.S. v. Polin, 824 F. Supp. 542 (E.D. Pa. 1993).

5 Am. Jur. 2d Arson and Related Offenses V C Refs.

American Jurisprudence, Second Edition | May 2021 Update

Arson and Related Offenses

Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.

V. Prosecution and Trial

C. Proof; Jury Instructions; Verdict; Sentence and Punishment

Topic Summary | Correlation Table

Research References

West's Key Number Digest

West's Key Number Digest, Arson 39, 41, 42, 45

A.L.R. Library

A.L.R. Index, Arson
A.L.R. Index, Criminal Law
West's A.L.R. Digest, Arson 39, 41, 42, 45

End of Document

5 Am. Jur. 2d Arson and Related Offenses § 52

American Jurisprudence, Second Edition | May 2021 Update

Arson and Related Offenses

Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.

V. Prosecution and Trial

C. Proof; Jury Instructions; Verdict; Sentence and Punishment

§ 52. Variance between pleading and proof

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Arson 39

It is axiomatic that a variance between the pleading and the proof[1] will be disregarded unless it is material to the offense charged or unless the accused is misled or prejudiced thereby.[2] For example, if the allegation setting forth the name of the insurer is not material to the offense charged, then a variance between the insurer alleged and that established by the proof is not fatal.[3] So also, the character of the building burned or the use to which it was put is not an element of the offense of burning insured property to injure or defraud the insurer and, thus, need not be pled.[4] A deviation between instructions on first degree arson, which stated that the crime was committed when, by means of fire or explosive, a person knowingly damaged any vehicles of another within said owner's consent, and an indictment charging first degree arson, which charged the defendant with knowingly and intentionally damaging by means of fire a truck belonging to the victim without the victim's consent, during the commission of the felony of concealing the death of another, did not give rise to a reasonable probability of a wrongful conviction, where the trial court read the indictment in full to the jury and charged the jury that the State had to prove each element of the crime as charged beyond a reasonable doubt.[5]

A person indicted as a principal in the burning cannot be convicted upon evidence tending to show only that the person was an accessory before the fact unless, by statute, the distinctions between those who set the fire and those who aid, counsel, induce, or procure another to do the burning have been eliminated and all involved are made equally guilty.[6] In that event, one can be convicted as an "aider and abettor" although no one is convicted as a principal.[7] The fact that the indictment charging the defendant with arson and murder did not specifically charge the defendant with "aiding, counseling, or procuring the burning" of the defendant's parents' house did not preclude the Commonwealth, after the defendant's first trial ended in a mistrial, from proceeding on a joint venture theory at retrial; the pursuit of a joint venture theory would not create an impermissible variance with the indictment.[8]

Arson statutes frequently divide arson into degrees and if the different degrees are distinguished by the conditions under which the burning occurs or by the circumstances surrounding it, a conviction will be upheld even though the accused is charged with one degree of the offense and the evidence establishes that the accused was guilty of another.[9] The rule which permits a conviction for an offense in a degree inferior to that charged in the indictment if the lesser crime is included in the greater,[10] has been applied where the lesser degree of arson is included within the degree of arson charged.[11] However, where the different degrees of the crime are distinguished by a difference in the particular act committed, a variance between the indictment and proof is material, and a conviction for the lesser crime cannot be upheld under an indictment charging the greater.[12]

Footnotes

1 Bae v. Peters, 950 F.2d 469 (7th Cir. 1991).
2 State v. Houck, 240 Kan. 130, 727 P.2d 460 (1986).
3 Bae v. Peters, 950 F.2d 469 (7th Cir. 1991).
4 Tillman v. Cook, 855 P.2d 211 (Utah 1993).
5 Miller v. State, 289 Ga. 854, 717 S.E.2d 179 (2011).
6 U.S. v. Yost, 24 F.3d 99, 40 Fed. R. Evid. Serv. 1083 (10th Cir. 1994).
7 U.S. v. Yost, 24 F.3d 99, 40 Fed. R. Evid. Serv. 1083 (10th Cir. 1994).
8 Choy v. Com., 456 Mass. 146, 927 N.E.2d 970 (2010).
9 State v. Jones, 174 W. Va. 700, 329 S.E.2d 65 (1985).
10 State v. Barnes, 333 N.C. 666, 430 S.E.2d 223 (1993).
11 People v. McDonald, 68 N.Y.2d 1, 505 N.Y.S.2d 824, 496 N.E.2d 844 (1986).
12 State v. O'Neill, 200 Conn. 268, 511 A.2d 321 (1986).

End of Document

5 Am. Jur. 2d Arson and Related Offenses § 53

American Jurisprudence, Second Edition | May 2021 Update

Arson and Related Offenses

Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.

V. Prosecution and Trial

C. Proof; Jury Instructions; Verdict; Sentence and Punishment

§ 53. Jury instructions

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Arson 41

Jury instructions in an arson prosecution are complete if they cover the pertinent areas of the law concerning inferences, circumstantial evidence, reasonable doubt, and the elements of the crime.[1] For instance, a jury instruction regarding attempted arson, instructing the jurors that they could convict the defendant of attempted arson if they found that the defendant committed an act in an attempt to set fire to a structure and that the defendant carried out that act with a willful and malicious state of mind, did not improperly fail to list every element of attempted arson by failing to instruct on specific intent; the instruction also contained the definition of attempted arson as requiring the placement of any flammable, explosive, or combustible material or device in or around structure with intent to set fire to it, the instruction further mirrored the arson statute by requiring that the defendant act willfully and maliciously, and those mental states were not inconsistent with the specific intent to set a fire.[2] Likewise, an arson jury instruction, which required the State to prove beyond a reasonable doubt that the defendant started a fire or caused an explosion, and that the defendant did so with the purpose of destroying or otherwise damaging an occupiable structure that was the property of another person, adequately addressed the State's burden to prove that the fire was not natural or accidental, and thus an additional instruction on the common law presumption against arson was not required; under the instruction given, the jury necessarily had to exclude natural or accidental causes for the fire in order to find that the defendant started the fire with the purpose of destroying or damaging the structure.[3] However, an instruction which omits an essential element of the crime is erroneous.[4]

It is not incumbent on a court to give an instruction where there is no evidence to support it. Where the evidence, completely undisputed, indicates that a fire was deliberately set, the trial court does not err in declining to give an instruction concerning a finding of whether the fire was the result of an accident, carelessness, or a natural cause.[5] For instance, an instruction on second degree arson of a structure as a permissive, lesser included offense of first degree arson of a dwelling is not required where the undisputed trial evidence demonstrates that the structure that is the subject of the arson charge was used exclusively as a dwelling, thereby excluding it from consideration as a second degree arson offense under the plain language of the arson

statute.[6] Similarly, a trial court was not required to instruct the jury regarding the defendant's presence at the scene of the crime, in a trial for burning personal property; the proof of the commission of the offense was possible when defendant was never present at the scene of the intentional burning, and the defendant simply denied all wrongdoing and did not present any evidence of a lesser included offense.[7] A defendant, who was charged with fourth degree arson, was not entitled to lesser-offense jury instructions on malicious mischief and/or vandalism; there was no evidence of the value of the items which were destroyed in fire, and both the vandalism statute and the malicious mischief statute required proof of monetary value in order to gain a conviction, and there was no value component whatsoever to the essential element of fourth degree arson.[8] An instruction setting forth a theory of accomplice liability did not mislead the jury or fail to put the defendant on notice of charges of murder, arson, and preparing false evidence, though the indictment did not contain language charging the defendant with aiding and abetting; the statute that abolished the distinction between principals and aiders and abettors allowed an aider and abettor to be charged as a principal, without the need for any other facts to be alleged in indictment.[9]

Under the federal arson statute,[10] arson is the malicious destroying or damaging by fire or explosive of public building or property being used in activity affecting interstate or foreign commerce. Thus, a trial court properly instructed the jury in a federal arson prosecution by indicating that the jury could find the subject premises to have been used in interstate commerce if they believed testimony to that effect.[11]

Footnotes

1 State v. Grundy, 582 A.2d 1166 (R.I. 1990).

2 People v. Rubino, 18 Cal. App. 5th 407, 227 Cal. Rptr. 3d 75 (6th Dist. 2017), review denied, (Mar. 14, 2018).

3 Fronterhouse v. State, 2015 Ark. App. 211, 463 S.W.3d 312 (2015).

4 State v. Houck, 240 Kan. 130, 727 P.2d 460 (1986).
In an arson prosecution under a statute providing that a person commits arson of a structure or property by knowingly and unlawfully damaging the same through fire or explosion, the trial court committed fundamental error when it failed to instruct the jury on the meaning of the term "unlawfully." State v. Newfield, 161 Ariz. 470, 778 P.2d 1366 (Ct. App. Div. 2 1989).

5 State v. Craven, 657 S.W.2d 357 (Mo. Ct. App. S.D. 1983).

6 Stevens v. State, 195 So. 3d 403 (Fla. 2d DCA 2016), review granted, 2016 WL 9454218 (Fla. 2016) and decision approved, 226 So. 3d 787 (Fla. 2017).

7 State v. Jefferies, 243 N.C. App. 455, 776 S.E.2d 872 (2015).

8 Thomas v. State, 48 So. 3d 460 (Miss. 2010), as modified on denial of reh'g, (Dec. 2, 2010).

9 State v. Shackelford, 150 Idaho 355, 247 P.3d 582 (2010).

10 18 U.S.C.A. § 844.

11 U.S. v. Stackpole, 811 F.2d 689, 22 Fed. R. Evid. Serv. 780 (1st Cir. 1987).

5 Am. Jur. 2d Arson and Related Offenses § 54

American Jurisprudence, Second Edition | May 2021 Update

Arson and Related Offenses

Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.

V. Prosecution and Trial

C. Proof; Jury Instructions; Verdict; Sentence and Punishment

§ 54. Verdict

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Arson 42

A guilty verdict is generally not to be set aside[1] and must be sustained if evidence, viewed and construed most favorably to the state, is sufficient to support the verdict.[2] A jury's verdict finding the defendant guilty of fourth degree arson was not so contrary to the overwhelming weight of the evidence that to allow it to stand would sanction an unconscionable injustice, and thus, a new trial was not warranted; although the defendant claimed that the only logical conclusion the jury could have reached was that the defendant had set fire to the sheet and blanket in the jail cell for attention and not to burn the jail, the record revealed only a scintilla of evidence that the defendant merely wanted attention, the defendant admitted to starting the fire with matches, to wanting to kill everyone, and to wanting to see what everyone was made of, and evidence indicated that the defendant wanted to set fire to the jail to harm the persons within the jail.[3] Likewise, a jury verdict finding the defendant guilty of arson in the second degree was not contrary to the weight of the evidence; the defendant's neighbor testified that before a fire started at the apartment door, the defendant had threatened to start a fire using lighter fluid because the neighbor's niece took money from the defendant without performing a sex act that the defendant paid for, the defendant's friend testified that the defendant told the friend to leave the building because it was on fire and later admitted to having started the fire, the defendant wore a hooded sweatshirt to disguise the defendant, and spray-painted surveillance cameras in the building, and that testimony was corroborated by surveillance footage and can of lighter fluid and spray paint found in a garbage can behind the building.[4]

Convictions for both second degree arson and first degree wanton arson were not violative of double jeopardy.[5] Also, a jury's verdict acquitting the defendant of first degree arson, but convicting the defendant of aggravated first degree arson, was not impermissibly inconsistent, where the jury examined the first degree arson charge and instruction and then read the elements of the charge of aggravated first degree arson and could have concluded that the latter charge more accurately reflected the circumstances of the case, the jury's acquittal on first degree arson did not mean that the jury was convinced of the defendant's innocence as to all the charges, and the jury determined the defendant's offense most closely conformed to the elements of aggravated first degree arson since two people died as a result of the fire caused by the defendant.[6]

Footnotes

1 State v. Adkins, 191 W. Va. 480, 446 S.E.2d 702 (1994).

2 State v. McDonald, 230 Neb. 85, 430 N.W.2d 282 (1988).

3 Thomas v. State, 48 So. 3d 460 (Miss. 2010), as modified on denial of reh'g, (Dec. 2, 2010).

4 People v. Launder, 132 A.D.3d 1151, 18 N.Y.S.3d 747 (3d Dep't 2015), leave to appeal denied, 27 N.Y.3d 1153, 39 N.Y.S.3d 387, 62 N.E.3d 127 (2016).

5 Crayton v. Com., 846 S.W.2d 684 (Ky. 1992).

6 State v. Payne, 134 Idaho 423, 3 P.3d 1251 (2000).

End of Document

5 Am. Jur. 2d Arson and Related Offenses § 55

American Jurisprudence, Second Edition | May 2021 Update

Arson and Related Offenses

Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.

V. Prosecution and Trial

C. Proof; Jury Instructions; Verdict; Sentence and Punishment

§ 55. Sentence and punishment

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Arson 45

The sentencing court must, as to each offense:[1]

• Determine the basic period of incarceration based solely on the nature and seriousness of the offense

• Determine the maximum period of incarceration

• Consider whether to suspend all or a portion of the maximum period of incarceration and whether to require the defendant to serve probation

In determining the appropriate sentence for one convicted of the crime of arson, the factors which a court will consider include whether the defendant's history indicates that the person is a particularly dangerous offender, whether the defendant is likely to engage in criminal activity again, and whether the defendant's sentence compares equitably with sentences given to others guilty of similar acts.[2]

Where a sentence imposed upon an arson defendant is alleged to be excessive, the reviewing court will make an independent examination of the record, having regard to the nature of the offense, the character of the offender, and the protection of the public interest.[3] For example, a 20-year sentence for arson is not manifestly unreasonable where the arson was committed at night in a residential area, and the defendant has an extensive criminal history.[4] A sentence of four to 12 years' imprisonment for arson in the third degree was not harsh or excessive; the agreed-upon sentence was less than the maximum authorized sentence, the plea satisfied charges related to four other fires for which consecutive sentences could have been imposed, the agreement took into consideration the defendant's age at the time of the crimes, between 17 and 20 years old, the defendant's lack of criminal history, and the defendant's cognitive limitations, a psychiatric evaluation reflected that the defendant understood nature of the actions, and the defendant acknowledged being aware that first responders could have been injured in fires that were set.[5] Likewise, a

sentence of 12 years imprisonment at hard labor for aggravated arson, with two years to be served without benefits, plus a fine of $5,000, was not excessive; the defendant's sister and uncle were home when the fire started and both believed that the defendant started the fire, the defendant's sister and niece obtained burns when escaping the fire, the sentence imposed was within the sentencing range, and the defendant had two prior felony convictions.[6] Imposition of concurrent three to nine year prison terms was not harsh or excessive for a defendant convicted of arson in the third degree and insurance fraud in the second degree for setting fire to the defendant's house; although the defendant had no adult criminal history before the current convictions and no fatalities or injuries resulted from the fire, the defendant's crimes had devastating emotional and economic effects upon the lives of the defendant's wife and family, and the defendant failed to express remorse or take responsibility for the consequences of the actions.[7] On the other hand, a sentence of an indeterminate term of 25 years' imprisonment for arson was unduly harsh and severe, and thus would be modified in the interest of justice to a term of 15 years to life imprisonment, particularly in light of the defendant's lack of prior felony convictions and the minimal damage and lack of injury caused by the incident.[8]

Observation:

A trial court's failure to impose a mandatory fine upon a defendant convicted of simple arson resulted in illegally lenient sentence.[9] Although an illegally lenient sentence may be corrected at any time by the court that imposed the sentence or by the appellate court on review, the court of appeal is not required to take such action.[10] Thus, a court of appeal would decline to remand for correction of illegal sentence, imposed upon defendant convicted of simple arson, to include mandatory fine, where the State did not object to the error, and the indigent defendant was not prejudiced by trial court's failure to impose the fine.[11]

Footnotes

1 State v. Cloutier, 646 A.2d 358 (Me. 1994).

2 Mossberg v. State, 733 P.2d 273 (Alaska Ct. App. 1987).

3 State v. Morris, 116 Idaho 16, 773 P.2d 284 (Ct. App. 1989).

4 Culvahouse v. State, 819 N.E.2d 857 (Ind. Ct. App. 2004).

5 People v. Perkins, 152 A.D.3d 1072, 60 N.Y.S.3d 534 (3d Dep't 2017).

6 State v. Purvis, 217 So. 3d 470 (La. Ct. App. 3d Cir. 2017).

7 People v. Howard, 134 A.D.3d 1153, 21 N.Y.S.3d 423 (3d Dep't 2015), leave to appeal denied, 27 N.Y.3d 965, 36 N.Y.S.3d 627, 56 N.E.3d 907 (2016).

8 People v. Graham, 125 A.D.3d 1496, 3 N.Y.S.3d 864 (4th Dep't 2015).

9 State v. Fuller, 130 So. 3d 960 (La. Ct. App. 2d Cir. 2013).

10 State v. Fuller, 130 So. 3d 960 (La. Ct. App. 2d Cir. 2013).

11 State v. Fuller, 130 So. 3d 960 (La. Ct. App. 2d Cir. 2013).

End of Document

5 Am. Jur. 2d Arson and Related Offenses § 56

American Jurisprudence, Second Edition | May 2021 Update

Arson and Related Offenses
Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.

V. Prosecution and Trial

C. Proof; Jury Instructions; Verdict; Sentence and Punishment

§ 56. Sentencing enhancement under federal arson statute

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Arson 45

A defendant who has been found guilty of arson will be sentenced pursuant to the federal sentencing guidelines.[1] While a sentencing court must impose a sentence of the kind, and within the range established for the applicable category of offense committed by the applicable category of defendant as set forth in the sentencing guidelines, there may be deviation from the guidelines where there exists an aggravating or mitigating circumstance not considered in the formulation of the guidelines.[2]

Sentencing guidelines under the federal arson statute[3] became effective on November 1, 1987.[4] As a result, courts are free to consider these guidelines in pronouncing more severe sentences on defendants. For example, an increase of 18 points was upheld where the defendant set the fire with multiple points of origin, since the surrounding businesses were at risk and there was an inhabited apartment complex a mere 35 feet from the burned building.[5] A 14-point increase was upheld for endangering fire fighters responding to a fire in a residential area[6] and for reckless endangerment.[7] Additionally, a base offense level of 24 was upheld where the defendant set the fire early on a cold morning with extremely high winds.[8] The court imposed an upward departure sentence where the defendant destroyed a competing restaurant and harmed the reputation of its owners,[9] and where the defendant failed to search the building before setting it ablaze.[10] An above-guidelines, 120-month sentence imposed on a defendant convicted of wildland arson was not unreasonable; the district court's discussion of statutory sentencing factors was a model of thoroughness and careful deliberation, the court discussed each factor extensively, stated its relative importance, and grappled with a variety of possible sentences from three years in a federal medical facility to 180 months in prison, the court considered, inter alia, that the defendant, who was then age 20, was a pyromaniac, a borderline psychotic, lacked risk aversion, and may have suffered from antisocial personality disorder, that the defendant had failed to get help for psychological problems, that the defendant started multiple fires during the fire season with the intent to cause widespread destruction, and that these fires caused almost $7 million in damage and placed many people's lives in danger, and the court concluded that the defendant posed a significant danger to society and would continue to do so for years to come.[11]

A hotel room counts as a dwelling, within the meaning of the Sentencing Guideline setting a base offense level for arson involving the destruction of a dwelling, regardless of whether the room was occupied at the time of the crime or was unoccupied for three months.[12] An attempted arson in which the defendant participated created a substantial risk of death or serious bodily injury to a person other than the participant in that offense, and that risk was created knowingly, as required to impose an increased base offense level under the arson sentencing guideline, in view of the fact that the attempt took place in an urban area, notwithstanding the presence of a fire station across the street.[13]

A court would impose the mandatory 10-year sentence for a defendant convicted of using arson to obstruct justice and/or destroy evidence; the 10-year length indicates the seriousness with which Congress and the Sentencing Commission treated the commission of any arson offense, independent and apart from the defendant's other offenses of obstruction of justice, destruction of evidence, using fire to damage property, and using a false passport.[14]

However, the sentencing enhancement for the use of fire to commit a federal felony does not apply where the underlying felony is arson; the crime of arson carries a heavy penalty for the same purpose as that of the enhancement, that fire is abnormally dangerous.[15] Also, the statutory sentence enhancement to be imposed when "personal injury results to any person" due to arson did not apply when the only person injured as result of the attempted arson of a restaurant was a coconspirator arsonist; although the statute's language seemed to suggest otherwise, enhancement was directed at injury to innocent third parties.[16]

Practice Tip:

A district court could not impose a stand-alone sentence of probation for a violation of the federal arson statute, since the statute imposed a mandatory minimum term of five years in prison.[17]

Footnotes

1 As to the general principles governing application of the federal sentencing guidelines, see Am. Jur. 2d, Criminal Law §§ 748 to 805.

2 Am. Jur. 2d, Criminal Law § 785.

3 18 U.S.C.A. § 844.

4 U.S. v. Bennett, 984 F.2d 597 (4th Cir. 1993).

5 U.S. v. Wilson, 927 F.2d 1188 (11th Cir. 1991).

6 U.S. v. Gio, 7 F.3d 1279, 39 Fed. R. Evid. Serv. 834 (7th Cir. 1993).

7 U.S. v. Guadagno, 970 F.2d 214 (7th Cir. 1992).

8 U.S. v. Turner, 995 F.2d 1357, 38 Fed. R. Evid. Serv. 1483 (6th Cir. 1993).

9 U.S. v. Willey, 985 F.2d 1342 (7th Cir. 1993).

10 U.S. v. Golden, 954 F.2d 1413 (7th Cir. 1992).

11 U.S. v. Warr, 530 F.3d 1152 (9th Cir. 2008).

12 U.S. v. Smith, 354 F.3d 390, 63 Fed. R. Evid. Serv. 85 (5th Cir. 2003).

13 U.S. v. Zaragoza, 117 F.3d 342 (7th Cir. 1997).

14 U.S. v. Vrancea, 136 F. Supp. 3d 378 (E.D. N.Y. 2015), aff'd, 688 Fed. Appx. 94 (2d Cir. 2017).

15 U.S. v. Konopka, 409 F.3d 837 (7th Cir. 2005).

16 U.S. v. Zendeli, 180 F.3d 879 (7th Cir. 1999).

17 U.S. v. Troy, 618 F.3d 27, 71 A.L.R. Fed. 2d 637 (1st Cir. 2010).

End of Document

5 Am. Jur. 2d Arson and Related Offenses Correlation Table

American Jurisprudence, Second Edition | May 2021 Update

Arson and Related Offenses
Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.

Topic Summary

Correlation Table

Arson and Related Offenses

2007	2018
1	§1
2	§2
3	§3
4	§4
5	§5
6	§6
7	§7
8	§8
9	§9
10	§10
11	§11
12	§12
13	§13
14	§14
15	§15
16	§16
17	§17
18	§18
19	§19
20	§20
21	§21
22	§22
23	§23
24	§24
25	§25
26	§26
27	§27
28	§28
29	§29
30	§30
31	§31
32	§32
33	§33
34	§34
35	§35
36	§36
37	§37
38	§38
39	§39
40	§40

41	§41
42	§42
43	§43
44	§44
45	§45
46	§46
47	§47
48	§48
49	§49
50	§50
51	§51
52	§52
53	§53
54	§54
55	§55
56	§56

End of Document